

REPORTER'S RECORD  
APPELLATE COURT CAUSE NO. AP-76,100  
TRIAL COURT CAUSE NO. 04-CR-3453-C  
VOLUME 19 OF 25 VOLUMES

THE STATE OF TEXAS ) IN THE DISTRICT COURT  
VS. ) 94TH JUDICIAL DISTRICT  
JOHN HENRY RAMIREZ ) NUECES COUNTY, TEXAS

TRIAL PROCEEDINGS

(Continued)

**FILED IN  
COURT OF CRIMINAL APPEALS**

**OCT 06 2009**

**Louise Pearson, Clerk**

On the 4th day of December, 2008, the  
following proceedings came on to be heard in the  
above-entitled and numbered cause before the HONORABLE  
BOBBY GALVAN, Judge Presiding, held in Corpus Christi,  
Nueces County, Texas:

Proceedings reported by Stenograph  
Machine.

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<p style="text-align: right;">5</p> <p>1 PROCEEDINGS</p> <p>2 December 4, 2008</p> <p>3 (Jury enters courtroom.)</p> <p>4 THE COURT: All right, be seated,</p> <p>5 please.</p> <p>6 All right, call your next witness, Mr.</p> <p>7 Skurka.</p> <p>8 MR. SKURKA: We call Kelly Isaacks.</p> <p>9 THE COURT: Kelly Isaacks.</p> <p>10 (Oath administered.)</p> <p>11 THE COURT: Be seated. You may proceed.</p> <p>12 MR. SKURKA: Thank you, Your Honor.</p> <p>13</p> <p>14 KELLY ISAACKS,</p> <p>15 having been first duly sworn, testified as follows:</p> <p>16 DIRECT EXAMINATION</p> <p>17 BY MR. SKURKA:</p> <p>18 Q. Would you please introduce yourself to the</p> <p>19 folks on our jury.</p> <p>20 A. Lieutenant Kelly Isaacks.</p> <p>21 Q. How are you currently employed?</p> <p>22 A. I am a patrol supervisor for the Corpus</p> <p>23 Christi Police Department.</p> <p>24 Q. How long have you been with the Corpus</p> <p>25 Christi Police Department altogether?</p>	<p style="text-align: right;">7</p> <p>1 Q. Slow down a second. What is special services</p> <p>2 division?</p> <p>3 A. It is vice and narcotics investigation, which</p> <p>4 involves -- and I went to the vice section, so I spent</p> <p>5 two years there basically investigating any kind of</p> <p>6 alcoholic, beverage commission offenses, prostitution</p> <p>7 crimes, and also assisted in narcotics investigation.</p> <p>8 Q. Okay, I just wanted them to know what the</p> <p>9 special services meant. What's the next assignment?</p> <p>10 A. Okay, then I transferred to the criminal</p> <p>11 investigations division.</p> <p>12 Q. What is that?</p> <p>13 A. That is our division of detectives that</p> <p>14 investigate all property crimes and all crimes against</p> <p>15 persons. They do the follow-up investigations after</p> <p>16 an offense is reported and they ultimately investigate</p> <p>17 the crime and file the charges and conduct all the</p> <p>18 follow-up investigation of the offense, et cetera.</p> <p>19 Q. Would that be fair to say that's essentially</p> <p>20 the detective bureau?</p> <p>21 A. Yes.</p> <p>22 Q. And it's divided in how many subsections, and</p> <p>23 like what, give us an example.</p> <p>24 A. Family violence unit, burglary and theft,</p> <p>25 financial crimes, and the homicide and robbery unit.</p>
<p style="text-align: right;">6</p> <p>1 A. It will be 19 years next month.</p> <p>2 Q. Did you have any other law enforcement</p> <p>3 experience before you joined the department?</p> <p>4 A. Yes, I did.</p> <p>5 Q. Where and when?</p> <p>6 A. I spent two years with the Dallas Police</p> <p>7 Department before I came to Corpus Christi.</p> <p>8 Q. And what was your duties, if anything, at the</p> <p>9 Dallas Police Department?</p> <p>10 A. I was a patrol officer there.</p> <p>11 Q. So you've been a patrol off -- I mean, a</p> <p>12 policeman for -- a police woman for 21 years?</p> <p>13 A. Yes.</p> <p>14 Q. Starting with what you did when you first</p> <p>15 started at the police department here in Corpus</p> <p>16 Christi, can you tell the jury briefly what divisions</p> <p>17 or departments you've worked in, starting when you</p> <p>18 first started up to your current assignment, please.</p> <p>19 A. Yes, I spent about -- after I graduated from</p> <p>20 the Police Academy I spent about a year and a half on</p> <p>21 the streets as a patrol officer, then I transferred to</p> <p>22 the traffic section as an accident investigator. I</p> <p>23 spent about three-and-a-half years there, then I</p> <p>24 transferred to the special services division. I spent</p> <p>25 two years there as a vice investigator.</p>	<p style="text-align: right;">8</p> <p>1 Q. And what department of that were you assigned</p> <p>2 to?</p> <p>3 A. I spent a year in burglary when I first</p> <p>4 transferred to that division and then I transferred to</p> <p>5 the homicide and robbery unit. I spent seven years</p> <p>6 there.</p> <p>7 Q. So you were a robbery and homicide detective</p> <p>8 for seven years?</p> <p>9 A. Yes.</p> <p>10 Q. Can you tell the jury essentially when your</p> <p>11 duties were when you did that division?</p> <p>12 A. I would be assigned any crime against a</p> <p>13 person, whether it be a sexual assault investigation,</p> <p>14 a shooting, stabbing, robbery, any crime against a</p> <p>15 person, all the way up to obviously homicide</p> <p>16 investigations. So the bulk of my -- of my</p> <p>17 investigations were sexual assault investigations and</p> <p>18 homicide investigations.</p> <p>19 Q. Apparently -- approximately how many homicide</p> <p>20 investigations did you have occasion to work on when</p> <p>21 you were in the detective bureau?</p> <p>22 A. I would say at least 50.</p> <p>23 Q. What was your next stop after you worked in</p> <p>24 the homicide/robbery division?</p> <p>25 A. After I left there, I spent a year and a half</p>

<p style="text-align: right;">9</p> <p>1 in the organized crime unit, and I ended up from --</p> <p>2 Q. Slow down. What's the organized crime unit</p> <p>3 that you were a year and a half with?</p> <p>4 A. It is long-term investigations of narcotics</p> <p>5 trafficking, really a variety of -- embezzlement</p> <p>6 cases, it was really a variety of different cases that</p> <p>7 we would investigate. We assisted F.B.I. and D.E.A.</p> <p>8 on some of their long-term investigations and it</p> <p>9 involved a lot of surveillance, a little more</p> <p>10 low-profile type investigation, I guess you could say.</p> <p>11 Q. Would it be fair to say that's more of an</p> <p>12 undercover type of group, they're not in uniform, are</p> <p>13 they?</p> <p>14 A. No, it is an undercover assignment.</p> <p>15 Q. After a year in organized crime unit, what</p> <p>16 did you do?</p> <p>17 A. I tested and promoted to lieutenant and then</p> <p>18 was reassigned to the uniform division as a patrol</p> <p>19 shift supervisor and I've spent the last</p> <p>20 two-and-a-half years in that capacity.</p> <p>21 Q. So you became a lieutenant about</p> <p>22 two-and-a-half years ago?</p> <p>23 A. Yes, sir.</p> <p>24 Q. Can you tell us generally what the difference</p> <p>25 is of being a lieutenant as opposed to the other jobs</p>	<p style="text-align: right;">11</p> <p>1 those type of offenses, crimes against property,</p> <p>2 basically.</p> <p>3 Q. So essentially you've gone from patrol to</p> <p>4 detective to supervisor in patrol and now you're going</p> <p>5 to be back as a supervisor in detective next month?</p> <p>6 A. Yes.</p> <p>7 Q. I want to direct your attention now,</p> <p>8 Lieutenant Isaacks, to a time of July 19, 2004, and</p> <p>9 ask what division of the department you were working</p> <p>10 in then.</p> <p>11 A. On that day I was assigned to the homicide/</p> <p>12 robbery division, and I was the on-call investigator</p> <p>13 that particular night and that meant -- meaning I was</p> <p>14 subject to being called out for any serious crime that</p> <p>15 may have been committed against a person, a homicide</p> <p>16 or a shooting or stabbing, any -- any incident where</p> <p>17 somebody had suffered serious bodily injury I was</p> <p>18 available to be called out.</p> <p>19 Q. And yet, at that time, you were in the -- a</p> <p>20 detective, correct --</p> <p>21 A. Yes, uh-huh.</p> <p>22 Q. -- you hadn't been promoted to lieutenant</p> <p>23 yet, correct?</p> <p>24 A. No.</p> <p>25 Q. You said the call-out, you need a call-out</p>
<p style="text-align: right;">10</p> <p>1 you've had in the police department?</p> <p>2 A. Basic differences is I'm a first-line</p> <p>3 supervisor. I supervise a group of nine patrol</p> <p>4 officers in our daily patrol work and that's the basic</p> <p>5 difference. I am in a uniform and patrol car and we</p> <p>6 are answering day-to-day calls and I am supervising to</p> <p>7 do that.</p> <p>8 Q. Now, you have another assignment -- are you</p> <p>9 still in that assignment right now?</p> <p>10 A. Yes.</p> <p>11 Q. But you are going to be reassigned shortly, I</p> <p>12 believe in January, correct?</p> <p>13 A. Yes, I've received a transfer back to the</p> <p>14 criminal investigations division.</p> <p>15 Q. So you're going to go back to being a</p> <p>16 detective next month?</p> <p>17 A. No, I'm going to be a supervisor for several</p> <p>18 detectives.</p> <p>19 Q. I'm sorry, I didn't mean to say just a</p> <p>20 detective, you're going to be a lieutenant in charge</p> <p>21 of several detectives now, correct?</p> <p>22 A. Yes; that's correct.</p> <p>23 Q. And what kind of crimes will you be working</p> <p>24 there?</p> <p>25 A. Financial crimes, forgeries, embezzlement,</p>	<p style="text-align: right;">12</p> <p>1 person. Does C.C.P.D. have detectives, you know, at</p> <p>2 the department 24/7?</p> <p>3 A. Most of the detectives in that division are</p> <p>4 not -- do not work past the -- the time of 5:00;</p> <p>5 however, the homicide unit, we would go on a rotation</p> <p>6 where we would be on call for anything that would</p> <p>7 occur after those hours, and basically that's what my</p> <p>8 responsibility was that night.</p> <p>9 Q. So essentially, do you work a day shift and</p> <p>10 then if something major happens you're called out?</p> <p>11 A. Yes.</p> <p>12 Q. Or what I'm trying to say is, you're not just</p> <p>13 sitting at home waiting for somebody to call you --</p> <p>14 A. Oh, no.</p> <p>15 Q. -- all day, correct?</p> <p>16 A. No, we work our regular shift and then we</p> <p>17 would usually go on an on-call after-hours schedule</p> <p>18 for a week at a time.</p> <p>19 Q. And you happened to be the homicide detective</p> <p>20 on call that night.</p> <p>21 A. Yes.</p> <p>22 Q. Let's go ahead and talk about that -- that</p> <p>23 day, July 19th, 2004. Were you -- were you in fact</p> <p>24 called out that night to answer a major crime scene?</p> <p>25 A. Yes, I was.</p>

13

1 Q. Tell the jury what -- what -- how that came  
2 about and what you did.

3 A. About 11:30 that night on the 19th, I was  
4 called at home and -- by the dispatch supervisor,  
5 which is our regular procedure. She called me and  
6 advised that we needed to be in route to 1902 Baldwin  
7 for a homicide, that it appeared that a store clerk at  
8 the Times Market at that location, that he had been  
9 beaten and robbed and that I needed to go ahead and  
10 respond.

11 Q. Did you know all the details that first time  
12 when you got from the dispatcher?

13 A. That was about all I knew.

14 Q. So what did you do?

15 A. I got dressed and got as quickly to the scene  
16 as I could.

17 Q. About what time was this?

18 A. It was about 11:30 p.m.

19 Q. When you arrived at the scene, what did you  
20 find?

21 A. I found -- when I arrived, the patrol  
22 officers had -- had secured the -- the scene there in  
23 the parking lot with yellow crime scene tape. I --  
24 when I got there, I spoke to some of the patrol  
25 officers, the first ones that were at the scene, and

14

1 told them to tell me what they had and what they knew  
2 so far. We did not at that time have anybody in  
3 custody, and -- and the deceased, the victim in this  
4 case, was laying in the parking hot. He was covered  
5 with a sheet at the time because, of course, by this  
6 time there were a lot of onlookers and a lot of people  
7 across the street, across Baldwin. So we were, in  
8 essence, trying to protect them from -- from seeing  
9 something.

10 Q. Can you give the jury a general description  
11 of what you observed when you first arrived at the  
12 scene, the location of the body and that stuff.

13 A. Okay. The convenient store -- when I got  
14 there, the -- like I said, everything was taped off,  
15 and I had already requested some other detectives get  
16 there so I was -- we were waiting for them to arrive.  
17 I was advised that I had a couple of witnesses that  
18 saw the -- what we still believed at this time was a  
19 beating and they had witnessed what had happened. I  
20 was shown where they -- where they were when they saw  
21 it. And I spoke very briefly with them at the scene,  
22 the two witnesses, and they -- they were very -- very  
23 confident and expressed to me they were very confident  
24 that they could make an identification if they saw the  
25 individuals involved, if they saw them again, so --

15

1 Q. So you just briefly talked to those witnesses  
2 and then what happened with those witnesses?

3 A. Well, they were separated when I got there.  
4 They with not able to speak with each other, and the  
5 officers did a good job in doing that.

6 Q. Why is that important?

7 A. So that they don't exchange stories, so that  
8 we get an independent recollection from each of them  
9 about what they saw and that they're not telling us  
10 something that -- that the other witness may have seen  
11 that they did not, so they were separated. Like I  
12 said, I spoke very briefly with them at the time and  
13 obviously we -- we had a fairly large and bloody crime  
14 scene. We had some very -- a very distraught store  
15 clerk that was working with -- Pablo Castro is the  
16 individual that we ended up finding out he was the  
17 deceased.

18 Q. So the deceased was identified as Pablo  
19 Castro?

20 A. Yes.

21 Q. And that was through the co-worker or other  
22 store clerk --

23 A. Lydia Salinas.

24 Q. -- you said?

25 A. A -- a co-worker that worked with him and

16

1 worked with him for quite some time. She obviously  
2 was very, very upset at the scene, but she -- she did  
3 identify him. He was identified when I got there. I  
4 already knew what his name was.

5 Q. Can you tell the jury who may not have ever  
6 been to a major crime scene how the work is divided  
7 up, as you, the case officer, in charge of the  
8 investigation, how do you divide up the case work and  
9 make it into assignments to the patrol people, the  
10 I.D. techs and maybe other detectives, what's the  
11 procedure?

12 A. Well, because I was the lead investigator on  
13 this case and we did have some complicating factors  
14 that we were dealing with at the same time when this  
15 homicide occurred, the patrol officers, I just needed  
16 to make sure that they were securing the crime scene,  
17 that they were not allowing our witnesses to speak  
18 with each other. I also needed them to -- to attempt  
19 to speak to people who may be in the crowd that may  
20 have seen something that we hadn't identified them as  
21 a witness yet.

22 So that was really their focus, was just  
23 to maintain the crime scene, make sure that no one in  
24 the crowd tried to enter the crime scene, and protect  
25 it in that way. When the other detectives arrived,



<p style="text-align: right;">17</p> <p>1 Detective Garcia, Detective Hugo Stimmler and</p> <p>2 Detective Lee arrived at the -- well, actually</p> <p>3 Detective Stimmler did not make it to the scene,</p> <p>4 because, like I said, we had some other things going</p> <p>5 on at the -- by this time, other things were happening</p> <p>6 that I had to dispatch them and make sure that they</p> <p>7 took care of those things.</p> <p>8 Q. And we'll talk about that in a minute. Okay,</p> <p>9 and you said other detectives came to assist you. Is</p> <p>10 that unusual to call out other detectives to assist --</p> <p>11 A. No.</p> <p>12 Q. -- in a case of this magnitude?</p> <p>13 A. No. This is a capital murder. I knew that</p> <p>14 on the way to the scene. I knew I was going to need</p> <p>15 some other help. The time is very precious at this</p> <p>16 point.</p> <p>17 Q. Why?</p> <p>18 A. Because evidence could be lost, there are</p> <p>19 people that we may not be able to contact. We need --</p> <p>20 I needed as much help as possible and that's why I</p> <p>21 requested -- on the way to scene, I requested for my</p> <p>22 supervisor that he get some more detectives on the</p> <p>23 way, because this -- this was going to be a -- a very</p> <p>24 serious crime, obviously, so --</p> <p>25 Q. How about the I.D. section, what is their</p>	<p style="text-align: right;">19</p> <p>1 A. That's correct.</p> <p>2 Q. Is that pretty much how the procedure works?</p> <p>3 A. Yes. And then they -- they essentially take</p> <p>4 over the scene as far as physical evidence and --</p> <p>5 and seizing any kind of property that is out there,</p> <p>6 they do that.</p> <p>7 Q. You mentioned one of the items that was</p> <p>8 located out there at the scene to be a gold nugget</p> <p>9 ring, did you say?</p> <p>10 A. Yes.</p> <p>11 MR. SKURKA: May I approach, Your Honor.</p> <p>12 THE COURT: Yes.</p> <p>13 Q. (BY MR. SKURKA) I'm going to show you what's</p> <p>14 already been admitted into evidence as State's Exhibit</p> <p>15 103. Would you examine the contents of State's</p> <p>16 Exhibit 103, please.</p> <p>17 A. (Witness complying.) Okay.</p> <p>18 MR. SKURKA: May I publish it to the</p> <p>19 jury, Your Honor?</p> <p>20 THE COURT: Yes.</p> <p>21 MR. SKURKA: I'm going to put this on the</p> <p>22 screen so everybody can see it. And, Geordie, do you</p> <p>23 mind rotating it a little bit so they can see the top</p> <p>24 of the ring.</p> <p>25 Q. (BY MR. SKURKA) What is 103?</p>
<p style="text-align: right;">18</p> <p>1 focus and what do you do with them?</p> <p>2 A. Basically, I fill them in on -- on what I</p> <p>3 know of the scene, what we have recognized as</p> <p>4 evidence. And, obviously, there were some items there</p> <p>5 that -- that were very obviously part of the crime, I</p> <p>6 should say, or they were -- they were items of</p> <p>7 evidence that we believed were -- were a part of the</p> <p>8 homicide.</p> <p>9 Q. What items?</p> <p>10 A. There was a gold nugget ring that was laying</p> <p>11 very near the victim's body, there was some papers and</p> <p>12 things that were kind of laying near his body. His --</p> <p>13 there was a lot of blood evidence. And -- and so we</p> <p>14 wanted to make sure that they were aware of everything</p> <p>15 that we had found, and yet, we will -- we will contain</p> <p>16 the crime scene as long as it's necessary for them to</p> <p>17 do a complete evaluation of the scene and make sure</p> <p>18 that -- because I'm not going to see everything, they</p> <p>19 have the time where they can spend so much longer at</p> <p>20 the scene as long as is -- is needed.</p> <p>21 Q. So would it be fair to say you make a kind of</p> <p>22 a preliminary viewing or observation of the scene, but</p> <p>23 then you turn it over to the I.D. techs, so they can I</p> <p>24 guess photograph it and record it and collect the</p> <p>25 evidence?</p>	<p style="text-align: right;">20</p> <p>1 A. The men's gold nugget ring that we found</p> <p>2 very close to Mr. Castro's body. It was actually in</p> <p>3 his blood there next to his body.</p> <p>4 Q. Did you ever talk to the store clerk that you</p> <p>5 said identified Mr. Castro as being the deceased and</p> <p>6 ask him -- ask her any questions about this so-called</p> <p>7 ring?</p> <p>8 A. Yes, I asked her if she could identify the</p> <p>9 ring and she said it was Pablo Castro's ring.</p> <p>10 Q. So, for the record, 103 is the ring belonging</p> <p>11 to Pablo Castro?</p> <p>12 A. Yes, sir.</p> <p>13 Q. And that was collected by I think the I.D.</p> <p>14 tech?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Okay.</p> <p>17 MR. SKURKA: You can turn the lights back</p> <p>18 on. Thank you, Frank.</p> <p>19 Q. (BY MR. SKURKA) Now, let's talk about at the</p> <p>20 Times Market. You're doing this investigation, you</p> <p>21 have detectives doing things, you have patrol</p> <p>22 officers, you know, keeping the crowd away, you have</p> <p>23 the I.D. techs coming in.</p> <p>24 At that time, were any suspects</p> <p>25 apprehended at or near the Times Market store?</p>



21

1 A. At or near the Times Market store?

2 Q. At that time were any suspects --

3 A. No.

4 Q. -- apprehended?

5 A. No, sir.

6 Q. At that time did you have any information

7 from either the patrolmen, the witnesses, or the store

8 owner or anybody around there as a possible suspect or

9 suspect vehicle descriptions?

10 A. Yes, we did.

11 Q. And what evidence -- I'm sorry, what

12 information was broadcast out on the radio for that?

13 A. The two witnesses that were Mariano Cervantes

14 and Kashif Butt who were at the car wash across the

15 street, or eyewitnesses in this case, gave a

16 description of two reddish-colored vans, large

17 full-sized vans that the -- that a male -- Hispanic

18 male suspect got into and a Hispanic female got into

19 the passenger side of the other van.

20 They told us that the -- they gave us a

21 very good description of the vans and also of the -- of

22 the male and the female that were out at the scene.

23 Q. Was there only one female identified both of

24 the -- by both of the witnesses or two?

25 A. Just one. We knew that we had two --

22

1 obviously three suspects. We had a driver of the

2 other van that the female got into the passenger side

3 of but we didn't know -- at that time, we didn't know

4 if it was another male or female.

5 Q. Okay. I don't think I asked this question

6 directly, but involved in the altercation out in the

7 parking lot, with the injuries to Pablo Castro, were

8 two or three people identified as actually doing the

9 injuries?

10 A. Two.

11 Q. And the third person you're saying was the

12 driver of one of the vans, correct?

13 A. Yes, that's correct.

14 Q. Okay. And besides the general description of

15 Hispanic male and Hispanic female, did you also have

16 other things like height, weight, age, sex, race,

17 hair, all --

18 A. Yes.

19 Q. -- that stuff?

20 A. Yes, we did.

21 Q. Did the -- did the gentlemen give you a

22 fairly good description of the people?

23 A. Yes.

24 Q. And you said earlier that they were confident

25 they could describe them or identify them, correct?

23

1 A. Yes, they -- they both seemed very confident.

2 Q. Well, what's the next thing that happened

3 with those witnesses?

4 A. Well, those witnesses were ultimately -- they

5 were transported back to the -- our -- our criminal

6 investigations division office for -- for statements

7 and for interviews, and ultimately that's -- that's

8 where they went.

9 Q. And they give gave a final full-fledged, I

10 guess, statement to the officers --

11 A. Yes, sir.

12 Q. -- at the -- at the department, correct?

13 A. That's correct.

14 Q. Now, switching gears. While you were at the

15 Times Market doing your investigation on -- I'm sorry,

16 you called it a capital murder, you knew it was a

17 capital murder. Why did you think it was at that

18 time?

19 A. Just per the preliminary information that I

20 got from the communication supervisor. She indicated

21 it was a store clerk that had been robbed and

22 murdered, so that makes it a capital.

23 Q. And what does robbery and murder equal in

24 Texas?

25 A. Capital murder.

24

1 Q. So while you're investigating this capital

2 murder investigation at the Times Market, did anything

3 else happen at a neighboring location that you thought

4 might be related to the incident that happened at 1902

5 Baldwin?

6 A. Yes.

7 Q. Can you tell the jury what that would have

8 been?

9 A. Actually, by the time I got to the scene at

10 the Times Market, I -- the officers there were already

11 informing me that there had been, approximately ten

12 minutes after the assault on Pablo Castro was called

13 in, about ten minutes later an aggravated robbery was

14 called in at the Whataburger there at Staples and

15 Baldwin, which is a short distance from -- from the

16 Times Market.

17 Q. How far away is that, would you guesstimate?

18 A. Maybe two miles, three miles? It's a guess.

19 Q. Why did you think that was connected to this

20 -- or the officers think it was connected to this one

21 at Times Market?

22 A. Well, the same description of the two

23 vehicles, the two large full-sized vans, red in color;

24 and we learned that one of vans had been left behind

25 there at the Whataburger at Staples and Baldwin. It

25

1 matched the description of the -- of the vehicles that  
2 were involved in this homicide. They were close,  
3 geographically, they were close in proximity to each  
4 other, and the suspects were a male and a female,  
5 Hispanic male and a female. And so it -- it was -- it  
6 was -- it seemed pretty simple to us, that there was a  
7 relation there.

8 Q. And besides the geographic proximity -- and  
9 you said it was only about ten minutes later from the  
10 first call?

11 A. The calls that were -- yes, they were ten  
12 minutes apart.

13 Q. Was anybody hurt at the Whataburger?

14 A. Yes, the victim in that case, April Metting,  
15 reported that she had put her hand up to defend  
16 herself, basically, from the Hispanic male who was  
17 robbing her at knife point and she received a small  
18 laceration on her finger from that.

19 Q. Now, were you aware, or I guess based on your  
20 experience as a homicide detective at this time, you  
21 said you first went in there and thought Pablo Castro  
22 had been beaten because of the, I guess, the radio  
23 traffic, what you had heard from the dispatcher. Did  
24 you identify the body of -- I mean, observe the body  
25 of Pablo Castro at the scene?

26

1 A. Yes, I did.

2 Q. And based on your experience and training,  
3 did you think he had been beaten to death or what had  
4 caused those wounds?

5 A. No, as soon as we removed the sheet there was  
6 no doubt in my mind he had been stabbed to death.

7 Q. With what instrument?

8 A. With a knife, it appeared to me. The wounds  
9 that I could see, and like I said, he was extremely  
10 bloody, but it was apparent to me this was not a  
11 beating.

12 Q. So, the knife -- I'm sorry, at the -- at the  
13 Whataburger that you heard the call about from Staples  
14 and -- and Baldwin, what instrument was used or item  
15 was used in that robbery?

16 A. A knife.

17 Q. Now, did you go to that scene at that  
18 Whataburger or did somebody else take care of that  
19 scene?

20 A. No. Another detective went to that scene.

21 Q. And that's -- I'm assuming, because you're  
22 still at the 1902 Baldwin --

23 A. Right, yes.

24 Q. -- location, correct? So you dispatch -- oh,  
25 I'm sorry, I think you said that. One of the officers

27

1 never made it to the 1902 Baldwin because you sent him  
2 to the other place.

3 A. Right. Detective Stimmler I believe went to  
4 that scene.

5 Q. So that's the sequence of events. So you  
6 hear -- you know -- you're working this one scene and  
7 then you hear about the Whataburger scene that  
8 happened ten minutes later, you dispatched another  
9 detective over there, what's the next thing that  
10 happened?

11 A. About seven minutes after that we got another  
12 report of an aggravated robbery that occurred  
13 involving a knife, a Hispanic male and Hispanic female  
14 at the Whataburger at 510 Texan Trail, which is Texan  
15 Trail and Alameda. Once again, we're -- we had the  
16 same description except now we only had one red van  
17 because we had one red van that was still -- that as  
18 left at the scene at Staples and Baldwin.

19 So once again, we're -- you know, we are  
20 very confident at this point that our suspects are still  
21 moving and -- and still committing offenses. So it was  
22 shortly thereafter that we became in pursuit or  
23 police officers came in pursuit of that vehicle.

24 Q. Okay. Before we go into that, I wanted to  
25 ask you some follow-up questions at the other -- about

28

1 the other Whataburger. Again, did the suspects'  
2 vehicle description match the same description of the  
3 vehicle or the vehicles that had been used in the  
4 Times Market incident?

5 A. Yes.

6 Q. And did it also match the description of the  
7 vehicle that was used in the first Whataburger  
8 incident?

9 A. Yes.

10 Q. And the suspects' themselves description, did  
11 that match, also?

12 A. Yes.

13 Q. Now, you mentioned earlier that Pablo Castro  
14 had been stabbed, based on your experience and  
15 training, with a knife?

16 A. Yes.

17 Q. Again, based on your experience and training,  
18 is a knife considered -- could be a deadly weapon, in  
19 that its manner and use is capable of causing serious  
20 bodily injury or death?

21 A. Yes.

22 Q. And, for record, is 1902 Baldwin, is that  
23 located in Nueces County, Texas?

24 A. Yes, it is.

25 Q. Where the Times Market store was.

29

1 A. Yes.

2 Q. Again, did you go to the Whataburger at the

3 Texan Trail thing or did you have another detective go

4 over there?

5 A. No, I had another detective go there.

6 Q. Now, you mentioned something about after that

7 Whataburger happened -- the second Whataburger robbery

8 occurred, you went to -- you heard about a pursuit

9 that took place.

10 A. Yes.

11 Q. Did you participate in the pursuit?

12 A. No.

13 Q. Did -- as the case officer, though, you are

14 aware of what happened at the pursuit, correct?

15 A. Yes.

16 Q. Were you aware or made aware, as a case

17 officer, that two people had been apprehended in the

18 area of Brewster Street by the Port area?

19 A. Yes.

20 Q. And who were -- had been apprehended?

21 A. Christina Chavez and Angela Rodriguez.

22 Q. Did anybody find the Defendant, John Henry

23 Ramirez, at that time?

24 A. No.

25 Q. Base -- and based on your time with this

30

1 investigation, what kind of efforts were made to

2 locate him that night?

3 A. Really, unprecedented search in the City. We

4 had our SWAT team, really every uniformed police

5 officer in Corpus Christi was looking for him.

6 Q. I'm going to talk about that night and then

7 we'll talk about later on.

8 A. Okay.

9 Q. But let's talk about that night. What --

10 what efforts were made to coordinate any possible

11 apprehension of the third suspect?

12 A. Uh --

13 Q. And, I'm sorry, before you say that, by that

14 time had you found -- or had him identified by one of

15 officers in the pursuit as the suspect?

16 A. Uh, not at that -- not at that time, no.

17 We -- we had the helicopter -- we had a Coast Guard

18 helicopter looking; we had our SWAT Team out looking;

19 we had bloodhounds from the Beeville Corrections, the

20 prison there, they had brought their bloodhounds over,

21 we were searching for him with those dogs. We had

22 just every available police officer in that area

23 searching, checking any kind of location.

24 This location was a very brushy area, kind

25 of over near where Whataburger Field is now, but it

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1 wasn't there then, and it was a very brushy, difficult

2 area to -- to search, but we searched all night long,

3 into the following day, and then the search obviously

4 continued much further after that, but --

5 Q. So the police department searched all night

6 and into the following daytime, correct?

7 A. Yes.

8 Q. During that time of the search, were you able

9 to make an identification of who the third suspect

10 was?

11 A. Yes.

12 Q. How? Or by who?

13 A. Well, ultimately, the van that was left at

14 the Staples and -- and Baldwin restaurant, the

15 registration --

16 Q. Well, I'm mostly asking about was anybody

17 able to identify the driver of the van during the

18 pursuit?

19 A. During the pursuant -- later he was able to.

20 Q. Okay.

21 A. Later.

22 Q. I know I'm getting fuzzy about what date and

23 what time it was --

24 A. Okay.

25 Q. -- but was an officer who was involved in the

32

1 pursuit able to identify the driver of the van he was

2 pursuing?

3 A. Yes.

4 Q. Who was that?

5 A. That was Officer Jaime Gray, at the time.

6 Q. And who, if anybody, did he identify as the

7 one driving the van during the dispute -- I mean,

8 during the pursuit?

9 A. John Henry Ramirez, Jr.

10 Q. Okay. Is John Henry Ramirez, Jr. Present in

11 the courtroom today?

12 A. Yes, he is.

13 Q. Can you describe -- can you point to him and

14 describe something he's wearing?

15 A. He's wearing kind of an orange-colored

16 long-sleeved shirt.

17 MR. SKURKA: Your Honor, may the record

18 reflect the witness has identified the Defendant as

19 John Henry Ramirez, Jr.?

20 THE COURT: It will so reflect.

21 MR. SKURKA: Thank you.

22 Q. (BY MR. SKURKA) After this officer made the

23 I.D., you knew who you were looking for, correct?

24 A. Well, the -- the identification -- the first

25 identification of John Henry Ramirez, Jr. Was not made

33

1 by that officer.  
 2 Q. It was made by somebody else.  
 3 A. Yes.  
 4 Q. But once that officer made the  
 5 identification, did that identification go out to all  
 6 the people involved in the search?  
 7 A. Oh, yes.  
 8 Q. I guess what I'm trying to say, I always see  
 9 it on T.V., they all have like a picture or something,  
 10 they go look, or they have a general description. Did  
 11 the officers all have that description --  
 12 A. Uh --  
 13 Q. -- or most of the officers have that  
 14 description?  
 15 A. -- we didn't get the picture out that night,  
 16 um, but we had it out first thing in the morning.  
 17 Q. But it was -- would it be fair to say,  
 18 though, you did have the general description provided  
 19 by the witnesses at the Times Market, correct?  
 20 A. Yes, we did.  
 21 Q. Looking all around that area of Brewster  
 22 Street and the Port area, was anybody ever able to  
 23 find him --  
 24 A. No.  
 25 Q. -- that night?

34

1 A. No, sir.  
 2 Q. Now, did you become aware, later, of a  
 3 witness who did see him that night -- earlier in  
 4 morning?  
 5 A. Yes.  
 6 Q. Who was that?  
 7 A. That was Ruby Pena.  
 8 Q. Would that be Ruby Pena or Ruby Garcia?  
 9 A. Ruby Garcia, I'm sorry. Ruby Garcia.  
 10 Q. There's a lot of names in here.  
 11 A. Yes, sir.  
 12 Q. That's okay. And how did you become aware of  
 13 Ruby Garcia?  
 14 A. She -- I believe she called me the following  
 15 day. I can't remember exactly how I came in contact  
 16 with her.  
 17 Q. Were you able to obtain a statement and  
 18 interview Ruby Garcia?  
 19 A. Yes, I went by and talked to her and she gave  
 20 me information that -- that John Henry Ramirez, Jr.  
 21 had come by that night while we were searching in the  
 22 Brewster area -- she lives off of York Street, which  
 23 is near Staples and -- and Texas Street, near that --  
 24 near that area -- but she said that he had -- he had  
 25 come to her door.

35

1 Q. During that night of the chase or the --  
 2 A. The night of the chase.  
 3 Q. -- night of the pursuit?  
 4 A. Yes, sir.  
 5 Q. Did she know him from before?  
 6 A. Yes.  
 7 Q. And was she able to identify the person who  
 8 came to the door as John Henry Ramirez, Jr.?  
 9 A. Yes.  
 10 Q. So based on that, you were -- I guess you  
 11 became aware the next day that he apparently had  
 12 eluded the manhunt.  
 13 A. Yes. Somehow he did.  
 14 Q. After that, after the fact -- I'm sorry, did  
 15 Ruby Garcia apprehend him or keep him there at her  
 16 house?  
 17 A. No, she -- she was getting ready to have a  
 18 physical altercation with him and --  
 19 Q. Why was she mad at him?  
 20 A. Angela Rodriguez is her sister and she was  
 21 very angry for the situation I guess that Angela was  
 22 now in.  
 23 Q. Did she help John Henry Ramirez at all?  
 24 A. No.  
 25 Q. That night, the next morning, did anybody in

36

1 Corpus Christi locate this Defendant you pointed out,  
 2 John Henry Ramirez?  
 3 A. No, sir.  
 4 Q. Tell us what efforts you made since -- the  
 5 police department -- since the night in question to  
 6 apprehend or find John Henry Ramirez.  
 7 A. Basically for two years my task was to find  
 8 John Henry Ramirez, Jr.  
 9 Q. What do you mean?  
 10 A. When I -- when I was transferred to the  
 11 organized crime unit that was my responsibility,  
 12 number one, from the chief, to find John Henry  
 13 Ramirez. That involved -- obviously, we asked for the  
 14 assistance from the F.B.I. He was on Crime Stoppers,  
 15 relentlessly on T.V. He was in the newspaper. Anyone  
 16 -- anyone having any information regarding the  
 17 whereabouts of John Henry Ramirez, Jr. To contact me.  
 18 We formed a sort of task force with the  
 19 U.S. Marshals where we used a lot of their resources in  
 20 trying to track phone records. I can't even tell you  
 21 how many hours of surveillance we conducted on his  
 22 family members around the time of John Henry's  
 23 birthday, around Mother's Day, any day -- any type of  
 24 significant day that we felt would be a day that John  
 25 Henry Ramirez, Jr. Might make an attempt to -- to see



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1 his family. It literally went on every day for about  
2 two years.

3 Q. You said something about phones. What do you  
4 mean, you did with -- something with the phones?

5 A. Well, we -- we attempted to -- well, I'm  
6 trying to think, here. We set up a "trap and trace"  
7 on his mother's phone.

8 Q. Can you tell the folks what a "trap and  
9 trace" means?

10 A. Basically, we weren't able to monitor any  
11 phone calls coming in or going out from his mother's  
12 telephone. And we felt if John Henry Ramirez was  
13 going to make an attempt to get help or if he needed  
14 money or if -- if he was going to make contact with  
15 anyone it would -- I'm sorry, it would be with his  
16 grandmother, not his mother, his grandmother.

17 Q. So it was his grandmother's phone?

18 A. His grandmother, yes, on his mother's side.

19 Q. It would be his maternal grandmother.

20 A. His maternal grandmother, thank you.

21 Q. Now, is this -- a "trap and trace," is this  
22 the kind you listen in on, like you hear taps on or is  
23 this the one that just records what number's been  
24 called or --

25 A. This one is --

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1 Q. -- where it's coming from?

2 A. Right, it -- it recorded -- we were not  
3 listening to actual conversations. We were simply  
4 monitoring phone -- every phone call that came in,  
5 what number it came from and every phone call that  
6 went out, and who they were -- who that call was being  
7 made to. And we -- we tried to follow-up on every  
8 single number that we could follow-up on.

9 We had other agencies in other cities  
10 follow-up on phone numbers because we would have to  
11 get a subpoena then to find out who the -- who the  
12 phone number came back to. It was a very -- really a  
13 very long, tedious process. And, you know, we tried  
14 different ways of trying to spur activity, but --

15 Q. So would it be fair to say that the search  
16 was limited just to Corpus Christi?

17 A. No, no, no.

18 Q. Explain.

19 A. After -- no, we -- obviously, we suspected  
20 that he may have headed down towards -- down south  
21 towards Mexico, so we had -- this information was  
22 broadcast statewide. We were able to get a segment of  
23 this homicide and the information about John Henry  
24 Ramirez, Jr., we were able to get that on America's  
25 Most Wanted.

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1 They broadcast that nationally. It wasn't  
2 a long segment, but it was -- it was broadcast on the  
3 national program, which spurred a lot of -- all the  
4 tips then came to me from America's Most Wanted.

5 Q. For the record, what is America's Most  
6 Wanted?

7 A. It's a -- it's a national television show  
8 that -- that basically they will showcase an offense  
9 that occurs and a person that has eluded law  
10 enforcement, they'll put their picture up on the -- on  
11 the program and give a description of him, and, you  
12 know, I believe a description of John Henry Ramirez'  
13 tattoos were put on there so that if he had changed  
14 his name, or anything like that, he would be  
15 identifiable with some distinctive tattoos that he had  
16 on his body.

17 It was a very -- very detailed  
18 description. We did -- that did generate quite a bit of  
19 tips from all over the United States.

20 Q. With any luck?

21 A. No.

22 Q. Did you trace -- track down all -- I'm sorry,  
23 try to track down every tip that you received about  
24 the whereabouts of John Henry Ramirez?

25 A. Yes, we did.

40

1 Q. And that was either locally or generated  
2 nationally, correct?

3 A. That's correct.

4 Q. When was John Henry Ramirez apprehended  
5 finally?

6 A. He was apprehended on February 20th of this  
7 year, 2008.

8 Q. February 20th of 2008?

9 A. Yes.

10 Q. And what agency made that apprehension?

11 A. The U. S. Marshal's Task Force apprehended  
12 him.

13 Q. What is the U. S. Marshal's Task Force, just  
14 briefly.

15 A. It's just a task force that had been working,  
16 as well as on -- apprehending other -- other  
17 criminals, they had been working on capturing John  
18 Henry Ramirez, Jr. They had -- they had worked with  
19 us from the very beginning on this.

20 Q. But would it be fair to say the U. S.  
21 Marshal's Task Force is -- is -- their only purpose is  
22 to go find wanted people?

23 A. Exactly.

24 Q. Because there are other duties U. S.  
25 Marshal's have, like guarding the courthouse, or --

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1 the federal courthouse, or escorting people, or doing  
 2 security at the courthouse, but this is a task force  
 3 just designed for the apprehension of felons, is it  
 4 not?  
 5 A. That's correct.  
 6 Q. And can you tell the jury approximately what  
 7 area on February 20th of 2008, Mr. Ramirez, the  
 8 Defendant in this case, was apprehended?  
 9 A. He was apprehended near the Texas/Mexico  
 10 border.  
 11 Q. By what town?  
 12 A. Brownsville, I believe.  
 13 Q. And, as you said it was February 20th, 2008.  
 14 How much time had passed from July 19th, 2004, to the  
 15 time this man was finally brought and apprehended?  
 16 A. Almost four years, three-and-a-half years.  
 17 Q. During your investigation, did you also have  
 18 opportunity -- and I'm going to backtrack, now, back  
 19 to the investigation of the two ladies that were  
 20 apprehended by Brewster Street. You were the person  
 21 that was I believe helping the officer -- not officer,  
 22 the I.D. tech, Kirksey, collect their clothing after  
 23 they were apprehended; is that correct?  
 24 A. Yes.  
 25 Q. Okay. That clothing has already been

42

1 admitted into evidence, but were you also present or  
 2 have a part in obtaining blood samples from Christina  
 3 Chavez and Angela Rodriguez?  
 4 A. Yes, I did.  
 5 MR. SKURKA: May I approach, Your Honor.  
 6 THE COURT: Yes.  
 7 Q. (BY MR. SKURKA) Okay. I show you what's  
 8 been marked for purposes of identification as 194.  
 9 Can you identify that?  
 10 A. Yes.  
 11 Q. What is it?  
 12 A. It is an envelope containing the blood --  
 13 the tubes of blood from Angela Rodriguez and Christina  
 14 Chavez.  
 15 Q. And you're the one that got that evidence?  
 16 A. Yes, sir.  
 17 Q. I'm going to ask you to open what's been  
 18 marked State's Exhibit 194. And maybe open on the  
 19 other end where there's no seals so you don't disturb  
 20 any seals on there.  
 21 A. (Witness complying.)  
 22 Q. Do you recognize the contents of State's  
 23 Exhibit 194, please, and describe them for the jury.  
 24 A. Yes, one is a plastic bag containing two  
 25 purple top tube bloods -- or two tubes of purple --

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1 I'm sorry.  
 2 Q. Start again.  
 3 A. Two tubes of blood from Christina Chavez and  
 4 two tubes of blood from Angela Rodriguez.  
 5 Q. And you were the one that witnessed that  
 6 blood being drawn from them?  
 7 A. Yes, I did.  
 8 MR. SKURKA: Your Honor, I tender  
 9 State's Exhibit No. 194, as a brown manilla envelope  
 10 containing two clear plastic envelopes of blood tubes.  
 11 Tender to Defense Counsel and offer them  
 12 in evidence.  
 13 MR. GARZA: No objection, Your Honor.  
 14 THE COURT: They're admitted.  
 15 Q. (BY MR. SKURKA) What did you do with these  
 16 after they were obtained?  
 17 A. I took them over to D.P.S. for D.N.A.  
 18 analysis.  
 19 Q. And was that for the purpose of having them  
 20 take D.N.A. samples from these items?  
 21 A. Yes, sir.  
 22 Q. And that way they would know where they came  
 23 from -- or who they came from, I'm sorry.  
 24 A. Yes.  
 25 Q. I show you the next exhibit, which is marked

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1 195. What is that?  
 2 A. That is the two tubes of blood that were  
 3 taken from John Henry Ramirez, Jr.  
 4 Q. Now, did you direct a detective to do that?  
 5 A. Yes, I -- of course, I was no longer in this  
 6 division, so I directed Detective Garcia to have that  
 7 done after -- after John Henry Ramirez was apprehended  
 8 that night.  
 9 Q. Is that the same Detective Garcia you  
 10 mentioned earlier that had helped you at the scene  
 11 that night?  
 12 A. Yes.  
 13 Q. And do you recognize his initials on the  
 14 package?  
 15 A. Yes.  
 16 Q. Could you open that package.  
 17 A. Does it matter which end or --  
 18 Q. Say again?  
 19 A. Does it matter which end?  
 20 Q. I don't know, just try not to disturb the  
 21 seals on there --  
 22 A. Okay.  
 23 Q. -- too much. What does -- for the record,  
 24 State's Exhibit 195 is actually a manilla envelope and  
 25 you pulled out a clear plastic envelope from within



45

1 that, I guess, is similar to those other ones in 194.  
 2 A. Yes.  
 3 Q. What does that indicate it is, 195?  
 4 A. Inside here?  
 5 Q. Yes.  
 6 A. Two tubes of the blood belonging to John  
 7 Henry Ramirez, that was removed from John Henry  
 8 Ramirez, Jr.  
 9 Q. And that's the same person you've identified  
 10 previously in the courtroom?  
 11 A. Yes.  
 12 Q. And you know it's his because it has his name  
 13 and R. L. Garcia's name on it, too, correct?  
 14 A. Yes.  
 15 Q. Go ahead and put it back in there, and I'm  
 16 going to give it to Defense Counsel. And was this  
 17 also submitted to the D.P.S. lab?  
 18 A. Yes, it was.  
 19 Q. And there's another person's name on here, I  
 20 believe, the evidence technician's name. I'm sorry, I  
 21 shouldn't make you look from across the room.  
 22 A. Yes, it looks like.  
 23 Q. And the submission form on the back, who  
 24 submitted it to the lab?  
 25 A. William Kirksey, one of our I.D. techs that

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1 was out at the scene there.  
 2 Q. So this does show it was taken to the lab,  
 3 correct?  
 4 A. Yes.  
 5 MR. SKURKA: I tender 195 to Defense  
 6 Counsel and offer into evidence.  
 7 MR. GARZA: No objection, Your Honor.  
 8 THE COURT: It's admitted.  
 9 Q. (BY MR. SKURKA) So that's what -- that last  
 10 item we introduced, 195, that's what would be called a  
 11 known sample of the Defendant, John Henry Ramirez,  
 12 correct?  
 13 A. Yes.  
 14 Q. Because they know where that blood came from.  
 15 A. Yes, sir.  
 16 Q. And those samples are necessary for the  
 17 D.N.A. people at the D.P.S. lab to do their analysis?  
 18 A. Yes, sir.  
 19 Q. And, in fact, in this case there was actually  
 20 four sets of blood that were given to the D.N.A. --  
 21 the D.N.A. people, correct?  
 22 A. Yes, the victim.  
 23 Q. Those three, plus the victim.  
 24 A. Right.  
 25 MR. SKURKA: Okay. Hold on, Your Honor.

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1 (Pause in proceedings.)  
 2 MR. SKURKA: Thank you, Ms. Isaacks.  
 3 I pass the witness.  
 4 THE COURT: Cross.  
 5 MR. GARZA: Yes, Your Honor, if you  
 6 please.  
 7 CROSS-EXAMINATION  
 8 BY MR. GARZA:  
 9 Q. Detective Isaacks, basically, your testimony  
 10 is that on that evening you were on call, I guess, so  
 11 to speak, as the detective that was put in charge of  
 12 this investigation, correct?  
 13 A. Yes.  
 14 Q. And you had arrived at the scene after  
 15 everything had already happened, to gather  
 16 information?  
 17 A. Yes. Correct.  
 18 Q. Okay. And then, based on that information,  
 19 you started giving out tasks or directives to some of  
 20 the other police involved in the investigation that  
 21 evening --  
 22 A. Yes, sir.  
 23 Q. -- is that correct? And then basically  
 24 followed up on everything as the investigation  
 25 continued. Is that pretty much it?

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1 A. That's pretty much it.  
 2 Q. Okay. As well as this -- whatever physical  
 3 evidence you took charge of, whatever physical  
 4 evidence you turned over to D.P.S., that you were a  
 5 part of the chain of custody, so to speak, with regard  
 6 to maintaining some sort of custody of all this  
 7 evidence; is that correct?  
 8 A. Right. Well, the bulk of the physical  
 9 evidence that was out there and the vans that was  
 10 recovered, I did not --  
 11 Q. You weren't involved in the gathering of  
 12 that, but that was somebody else's duties --  
 13 A. Yes.  
 14 Q. -- correct?  
 15 A. Yes.  
 16 Q. Okay. And you weren't involved in the chase.  
 17 You didn't witness any part of that, didn't witness  
 18 anything going down at the Whataburgers or anything  
 19 like that either, correct?  
 20 A. No.  
 21 MR. GARZA: Okay. Thank you.  
 22 I'll pass the witness.  
 23 THE COURT: Anything else?  
 24 MR. SKURKA: That's all the questions I  
 25 have, Judge.

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1 THE COURT: All right, you may stand  
2 down. Please don't discuss your testimony with anyone  
3 while this trial's going on.

4 THE WITNESS: Thank you.

5 THE COURT: All right, call your next  
6 witness.

7 MR. SKURKA: Pam Smith.

8 THE COURT: All right. Pam Smith.

9 (Oath administered.)

10 THE COURT: Be seated.

11 MR. SKURKA: May I proceed, Your Honor.

12 THE COURT: Yes.

13

14 PAMELA SMITH,

15 having been first duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. SKURKA:

18 Q. Good morning. Would you please introduce  
19 yourself to the folks on the jury.

20 A. My name is Pamela Smith. I work for the  
21 Texas Department of Public Safety in the Corpus  
22 Christi Crime Laboratory.

23 Q. How long have you been an employee of the  
24 Department of Public Safety?

25 A. For seven years.

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1 Q. What is your current occupation or role or  
2 title with the Department of Public Safety?

3 A. Currently, I'm the laboratory manager.

4 Q. I know you're talking straight to the jury,  
5 but you're getting away from the microphone a little  
6 bit. Would you push the microphone a little closer to  
7 you.

8 A. (Witness complying.)

9 Q. Okay, thank you. You're the laboratory  
10 manager?

11 A. Yes, sir.

12 Q. I'm going to start off by talking to you  
13 about your educational background and then I'm going  
14 to switch to your work background, okay? First, tell  
15 the jury if you have a degree, and if so, where and  
16 what schools did you attend?

17 A. Yes, I have a Bachelor of Science in forensic  
18 science from the University of Central Florida; and I  
19 have a Master of Science in industrial chemistry, with  
20 a focus on forensic D.N.A. analysis, also from the  
21 University of Central Florida.

22 Q. And when did you receive those degrees?

23 A. I received my Bachelor's in 1978 and my  
24 Master's degree in 2006.

25 Q. And what's your Master's degree in, please?

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1 A. Industrial chemistry.

2 Q. What does that mean?

3 A. Well, this particular industrial chemistry  
4 program focused on forensic D.N.A. analysis.

5 Q. So you have a base -- I'm sorry, you have a  
6 Bachelor's degree in forensic science; and then a  
7 Master's degree in industrial chemistry, which really  
8 focuses on D.N.A.

9 A. Yes, sir.

10 Q. Can you explain to the jury because I was an  
11 English major, I don't know what forensic science  
12 major means. What does that mean?

13 A. Well, forensic science is simply the  
14 application of science to -- to the public arena or  
15 the application of science, in this particular  
16 instance, to the criminal justice system.

17 Q. Now that we've talked about your background  
18 and the fact you have a Bachelor's degree and Master's  
19 degree, I want to start talking about your work  
20 experience. And I would like you start at the  
21 beginning where you're first employed, moving up to  
22 the jobs you've had and to your present job.

23 A. Well, previously, I was employed by the  
24 Florida Department of Law Enforcement and there I  
25 completed a one-year training program in forensic

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1 serology. I later was employed by the Texas  
2 Department of Public Safety.

3 Upon employment with them, I completed a  
4 one-year training program in forensic serology in  
5 D.N.A. analysis. And I continued to participate in  
6 continuing education on an annual basis. That's a  
7 requirement of my position. I meet the educational  
8 requirements as set forth for a Forensic D.N.A.  
9 Examiner by the F.D.I., as their quality assurance  
10 standards; and as a forensic scientist doing D.N.A.  
11 analysis, I was proficiency tested about twice a  
12 year.

13 Q. Your work at the Florida Department of Law  
14 Enforcement, is the department of law enforcement  
15 similar to like the D.P.S. here in Texas?

16 A. Yes, it is. It's a state police  
17 organization.

18 Q. Just like D.P.S. is, correct?

19 A. Yes, sir.

20 Q. You said that you have a lot of -- working as  
21 a technical leader and forensic scientist and  
22 essentially your tenure with the D.P.S. has gone from  
23 just a scientist to a supervisor to finally the lab  
24 supervisor, correct?

25 A. Yes, sir.

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1 Q. Tell the jury what your general duties were  
2 when you first started with the D.P.S. lab and how  
3 they've expanded into your present position.

4 A. As a forensic scientist, I would receive  
5 evidence into the laboratory. I would examine the  
6 evidence for the presence of hairs, fibers and  
7 biological stains. I make notations of the items that  
8 may be of evidentiary value. I would perform chemical  
9 tests and write reports as to my results, and then  
10 testify in court to my results.

11 Q. When you -- as far as being, now, as the  
12 laboratory manager, how many people do you supervise?

13 A. 13.

14 Q. And how many of those are -- are D.N.A.  
15 people or work with D.N.A.?

16 A. 5.

17 Q. And what did the others do?

18 A. Drug chemistry analysis, blood alcohol  
19 analysis, and some technical support personnel.

20 Q. Are one of the other people you supervise as  
21 a D.N.A. scientist a person by the name of Robin Olson  
22 Castro?

23 A. Yes, sir.

24 Q. Did she assist you in the production -- or  
25 the -- the production of reports in this case?

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1 A. She performed some of the D.N.A. testing in  
2 this case and issued a report.

3 Q. And did you collaborate with her on some of  
4 these reports?

5 A. I --

6 Q. Or a supervisor of her report, I'm sorry.

7 A. She had a supervisor in between me, but I  
8 have reviewed her work and reviewed her report.

9 Q. And that's because that's -- as another part  
10 of your duty, you did the first part of it and then  
11 she did some of lab analysis, too, correct?

12 A. That's correct.

13 Q. Tell us about -- have you -- you seem to have  
14 a lot of training in the area of D.N.A. analysis,  
15 which I think you've already testified to. Have you,  
16 yourself, taught in the area of D.N.A. analysis?

17 A. No, I have not.

18 Q. Have you ever done any courses or other  
19 training besides your educational background in  
20 getting your Master's degree in the specific area of  
21 D.N.A., either put on by D.P.S. or any other agency?

22 A. Yes. I receive regular training, up-dated  
23 training on an annual basis in the field of D.N.A., as  
24 a continuing education requirement.

25 Q. Have you ever published or written any

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1 articles about forensic serology or D.N.A.?

2 A. Yes. I published an article titled, Simplified  
3 Low-Copy-Number DNA Analysis by Post-Pcr  
4 Purification.

5 Q. Whoa, that's a mouthful. What is that about,  
6 in layman's terms?

7 A. Well, it's simply a technique to enhance the  
8 sense of D.N.A. analysis.

9 Q. P.C.R. is a different type of D.N.A. analysis  
10 as one of the forms, correct?

11 A. It's a form that is still in use today.

12 Q. It's still used. Have you also done any  
13 presentations to any of your peers at any, like,  
14 seminars, or so, in your field?

15 A. Yes, I've presented my work at Human  
16 Identification Conference, and also at the American  
17 Academy of Forensic Science Conference.

18 Q. You mentioned you wrote these articles. What  
19 -- this article. Where is this article printed, is it  
20 some kind of D.N.A. magazine or scientific magazine?

21 A. It was published in the Journal of Forensic  
22 Science in July of 2007.

23 Q. What is the Journal of Forensic Science?

24 A. The Journal of Forensic Science is put out by  
25 the American Academy of Forensic Sciences. It is the

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1 premiere journal in forensic science in the United  
2 States and much the country -- much of the world.

3 Q. So it's not something we'd all read in the --  
4 waiting for the doctor's office visits.

5 A. No, sir. You have to subscribe.

6 Q. Okay. Now, you said you've been published in  
7 that article -- in that article in that -- in that  
8 publication. Have you also -- do you belong to any  
9 professional organizations in your field?

10 A. I'm a member of the Association of Forensic  
11 D.N.A. Analysts and Administrators, and also a member  
12 of the Southwestern Association of Forensic  
13 Scientists.

14 Q. And how long have you been members of those  
15 organizations?

16 A. Seven years.

17 Q. Have you testified in courts before as an  
18 expert witness in the area of D.N.A. or D.N.A.  
19 comparisons?

20 A. Yes, I have.

21 Q. How many times?

22 A. In excess of 20 -- in excess of between -- in  
23 excess of 20.

24 Q. Over 20 times?

25 A. Yes.

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1 Q. And have you qualified as an expert test --  
 2 have you been qualified as an expert in this field in  
 3 the courts of Nueces County or any other counties?  
 4 A. Yes, I have.  
 5 Q. How many times?  
 6 A. In excess of 20.  
 7 Q. Now that we've talked about your background  
 8 and your qualifications, I want to switch gears and  
 9 now educate the jury a little bit about D.N.A. First  
 10 of all, can you tell jury what D.N.A. is?  
 11 A. Well, D.N.A. is the genetic material that you  
 12 inherit at conception. You receive half from your  
 13 mother and half from your father. D.N.A. is what  
 14 makes you unique to all other individuals. It is  
 15 found in every cell of the body, with the exception of  
 16 mature red blood cells. In blood we get D.N.A. from  
 17 the white cells.  
 18 Q. What does -- does a person -- does a person  
 19 -- one person's D.N.A. different from another  
 20 person's?  
 21 A. Yes. Much of human D.N.A. is the same, as  
 22 you may have heard. But I look specifically at  
 23 noncoding regions of the D.N.A. that are known to vary  
 24 greatly among individuals.  
 25 Q. What about people that -- we had an expert

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1 testify about fingerprints and no two fingerprints are  
 2 the same. My next question to you is, do you have the  
 3 same thing in D.N.A.? What about everybody have --  
 4 especially different D.N.A?  
 5 A. Well, D.N.A. is unique to each individual,  
 6 with one exception, and that is identical twins.  
 7 Identical twins do have the same D.N.A. profile.  
 8 Q. And that's the only time?  
 9 A. Yes.  
 10 Q. What if they come from the same family, like,  
 11 you know, a mother and a daughter? Wouldn't they have  
 12 the same D.N.A?  
 13 A. There would be similarities in their D.N.A.  
 14 profiles, but they would not have the same D.N.A.  
 15 profile.  
 16 Q. In other words, it would match in some  
 17 places, but not match in other places on the D.N.A.  
 18 chain?  
 19 A. Correct.  
 20 Q. So is that how they can do paternity testing?  
 21 For example, you can tell a child came from this  
 22 mother or this father because of some of those  
 23 similarities?  
 24 A. It's because they receive half their D.N.A.  
 25 from the mother and half the D.N.A. from the father.

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1 Q. Okay. So that's where D.N.A. comes from,  
 2 it's genetic, it's inherited.  
 3 A. Yes, it is.  
 4 Q. But, again, the child wouldn't have the exact  
 5 same D.N.A. as the mother or father.  
 6 A. Correct.  
 7 Q. Does D.N.A. profile change over a person's  
 8 lifetime?  
 9 A. No, it does not.  
 10 Q. Why?  
 11 A. Because your D.N.A. remains the same.  
 12 Q. Because you were born with it and you die  
 13 with it, correct?  
 14 A. That's correct. It's in every cell of your  
 15 body and it cannot be changed.  
 16 Q. The word D.N.A. profile, when I say D.N.A.  
 17 profile, can you explain to the jury what that means?  
 18 A. Well, to obtain a D.N.A. profile, I look at  
 19 specific locations on the D.N.A. and I identify  
 20 different forms of D.N.A. that can occur at each  
 21 location. Those forms are called, "alleles." A  
 22 person has two alleles in each location, and those  
 23 alleles are identified by a number.  
 24 So if I can identify both alleles at all  
 25 the locations I examine, then I obtain a complete D.N.A.

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1 profile. Essentially, it looks like a list of  
 2 numbers.  
 3 Q. And that profile is, again, inherent just to  
 4 that one person.  
 5 A. Correct, with the exception of identical  
 6 twins.  
 7 Q. With the exception of identical twins. How  
 8 is the use of D.N.A. profile, how is that applied in a  
 9 forensic setting?  
 10 A. Well, I receive a item of evidence that's  
 11 associated with a crime. I perform presumptive tests  
 12 to look for biological stains, such as blood, semen  
 13 and saliva. I then extract D.N.A. from the biological  
 14 stain to obtain a D.N.A. profile. If I obtain a  
 15 D.N.A. profile from the evidentiary item, then I  
 16 compare that profile to the D.N.A. profile of known  
 17 individuals that were submitted to me to determine if  
 18 there's a match.  
 19 If there is a match then I perform a  
 20 statistical calculation to determine the significance  
 21 or weight of that match and I issue a report.  
 22 Q. Well, let's talk about the first part and  
 23 then the second part you talked about. You first  
 24 compare items to see if there's a match, and then you  
 25 compare a statistical report. Let's start off with



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1 the first part where you compare items. What type of  
2 items are submitted to you for comparison and what do  
3 you compare them to?

4 A. Well, it may be -- it would be any type of  
5 evidentiary item. It may be a swabbing taken from a  
6 crime scene. It could be clothing from a victim or a  
7 suspect, any item that is collected at a crime or from  
8 the victim or from a potential suspect that may be  
9 associated with the crime that has taken place.

10 Q. So it could be a physical object like a shoe,  
11 a rag, a towel.

12 A. Yes.

13 Q. But it could also be a swabbing.

14 A. That's correct.

15 Q. Explain to the jury what a swabbing is.

16 A. Well, a swabbing is literally a cotton swab,  
17 much like a Q-tip swab that someone that is conducting  
18 an investigation at the crime scene will collect the  
19 evidence -- the stain that they see at the crime scene  
20 onto the swab. So I receive a cotton swab that may  
21 have a -- it could have a bloodstain on it. It could  
22 have a semen stain on it. It could have a saliva  
23 stain on it.

24 Q. Does it make any difference when you're  
25 making your comparison whether you have the object

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1 itself or a swabbing from it?

2 A. No, it doesn't.

3 Q. So a person, say for example, if there's a  
4 bloodstain on my sock, you could either have the sock  
5 or a swabbing from the sock and it would make no  
6 difference in the scientific analysis.

7 A. That's correct.

8 Q. So a swabbing is just as good as the actual  
9 item.

10 A. Yes.

11 Q. Is it -- and you mentioned something about  
12 D.N.A., and you can get it from different things, and  
13 you mentioned semen or blood. Where is D.N.A. found  
14 in the body? And I'm not saying that right. What  
15 things can you extract D.N.A. from that people  
16 produce?

17 A. Well, I can extract D.N.A. from any cellular  
18 material, but the cellular material that -- well, what  
19 is most likely to leave a lot of cells from behind a  
20 person is blood, semen or saliva. In some cases where  
21 something's been in contact with an individual's skin  
22 repeatedly, skin cells can be rubbed off onto that  
23 item. We call those "epithelial cells." And there  
24 may be enough epithelial cells present for me to  
25 obtain a D.N.A. profile on some items.

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1 Q. So would it be fair to say that, generally  
2 speaking, you can extract D.N.A. from fluids, semen  
3 blood and saliva?

4 A. Correct.

5 Q. And --

6 A. And nasal secretions, I could add in there.

7 Q. What secretions?

8 A. Nasal secretions.

9 Q. Nasal secretions, I'm sorry. But, again, I'm  
10 talking about basically fluids.

11 A. Correct.

12 Q. Okay. But you said you can get stuff off  
13 skin, and you called them epithelial skin cells. How  
14 does that work?

15 A. As a person touches something or wears an  
16 item of something and that rubs across the surface of  
17 their skin, cells are sloughed off and can be  
18 deposited on that item. The amount of cells that are  
19 deposited can vary greatly from item to item,  
20 depending upon the individual wearer, the length of  
21 time, when it may have been washed last.

22 Q. Sounds like -- a little bit like  
23 fingerprints, where fingerprints sometimes are left at  
24 the scene and sometimes they're not, depending on  
25 stuff.

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1 A. Yes.

2 Q. So, I'm going to use my sock as an example.  
3 If I took my sock off right now, there might be skin  
4 cells coming off my foot that stayed with the sock.

5 A. That's possible.

6 Q. Okay. So you can get it from any of these  
7 sources, generally speaking.

8 A. Yes.

9 Q. Maybe not all the time, but these are the  
10 places that -- things that are capable of coming from.  
11 Okay. So is it possible to take D.N.A. from  
12 biological material found at a crime scene, then, and  
13 compare it with D.N.A. from a blood sample, from a  
14 suspect, and make a comparison of the two?

15 A. Yes, it is.

16 Q. How?

17 A. Well, when I make the comparison, I determine  
18 whether or not there's a match. If there is not a  
19 match, then I can say that that suspect is excluded  
20 and could not have contributed the D.N.A. to this  
21 stain.

22 If there is a match, then the suspect  
23 could not be excluded and could have contributed the  
24 D.N.A. that came from that stain.

25 Q. Now, we mention -- I mentioned in my question

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1 a second ago, "a known blood sample." What do I mean  
2 by that?

3 A. That is a blood sample that is taken directly  
4 from an individual, I know who the source is. It is  
5 taken for comparison purposes so that I can determine  
6 their D.N.A. profile and compare that D.N.A profile  
7 from the D.N.A. profile I obtained from evidence.

8 Q. So how -- how do you usually receive that  
9 blood sample?

10 A. It's submitted into the laboratory, much as  
11 any other type of evidence. It may be in a blood tube  
12 container in a -- in a padded envelope.

13 Q. But that's actually the fluid itself, the  
14 blood itself in a -- in a vial?

15 A. Oftentimes the blood is in a vial, sometimes  
16 the blood's been taken from a vial and stained onto a  
17 piece of paper that -- that is good for preserving  
18 D.N.A.

19 Q. Do you have to always have it in like a  
20 liquid form in a vial or can you have it on this stain  
21 that's put on another piece of paper or card?

22 A. No. The stain is absolutely fine. When we  
23 receive it in a liquid vial, we place it on a -- we  
24 make a stain on a piece of this type of paper.

25 Q. I just say that because you mentioned

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1 something about preserving the evidence or preserving  
2 things. Again, is a vial of blood just as good as the  
3 stain of the blood?

4 A. Well, eventually, the vial of blood will --  
5 will degrade because it's a liquid sample. The stain,  
6 once it's in placed on this paper and it dries, it can  
7 be put in stored at room temperature for long periods  
8 of time and the D.N.A. remains viable.

9 Q. So when you get the blood vials, you say it's  
10 your procedure at your lab to make a stain out of it,  
11 anyway, so you don't have to worry about, I guess,  
12 keeping it cold in the refrigerator or something like  
13 that or else the blood would, what did you call it,  
14 "Degrade"?

15 A. Yes.

16 Q. What does that mean? How does blood degrade?

17 A. It -- it breaks apart due to bacterial  
18 growth, and that can break down the D.N.A.

19 Q. Okay. If that happened, you wouldn't be able  
20 to preserve anything, correct?

21 A. Correct.

22 Q. Okay. So that's why it's important to make a  
23 stain, to keep it, make sure the blood doesn't  
24 degrade.

25 A. Yes.

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1 Q. Okay. In my last question I asked you about  
2 can you compare the thing and make a comparison of the  
3 known blood sample with evidence you have. What would  
4 that comparison tell us?

5 A. It would tell me whether or not the  
6 individual was excluded as a contributor or could not  
7 be excluded as a contributor.

8 Q. So you can tell whether the blood or the  
9 semen or saliva came from a person or not.

10 A. Correct.

11 Q. Is there a particular scientific method used  
12 to obtain a D.N.A. profile from biological material?

13 A. Yes. I use a technique called "polymerase  
14 chain reaction" or P.C.R., for short.

15 Q. What is that?

16 A. Well, P.C.R. is a process that mimics the  
17 body's ability to make exact copies of D.N.A., as your  
18 body does whenever you reproduce a cell. It works  
19 much like a Xerox machine makes exact copies of a  
20 document. P.C.R. allows me to look at certain  
21 locations on the D.N.A. molecule and make exact copies  
22 of those locations, turning a small sample into a  
23 large enough sample for analysis.

24 Q. When you do the P.C.R., you basically just  
25 copy it, correct?

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1 A. Yes.

2 Q. Okay. And can you explain a little more  
3 detail how that technique works?

4 A. Well, it's fairly involved scientifically.  
5 It replicates what your body does when it reproduces  
6 D.N.A. as you grow. You go through a process of  
7 heating and cooling the D.N.A. in the presence of  
8 certain molecules, primers and polymerases, and that  
9 -- that mimics the copying process that takes place in  
10 the body.

11 Q. So is this something that's done like right  
12 away, where you can go put a blood stain on there and  
13 then do D.N.A. and it's ready in five minutes?

14 A. No, it takes a period of time to do this.  
15 There is an extraction process where the D.N.A. has to  
16 be taken out of the stain, it has to be purified, and  
17 then taken -- you have to determine how much D.N.A. is  
18 present and then perform this P.C.R. process.

19 Q. So about how long would it take to test for  
20 D.N.A.? The reason I ask you is on T.V. it happens in  
21 30 minutes.

22 A. Correct.

23 Q. How does it really happen?

24 A. Well, theoretically, if you just had one  
25 sample and you were to take it through this process,



1 you could have results in two to three days. However,  
2 in the crime laboratory samples are batched, for  
3 efficiency purposes, and from the beginning of  
4 extracting D.N.A. to the time a report has been  
5 reviewed and goes out, it could be a two-month period.

6 Q. Do you trust -- test a person's entire D.N.A.?

7 A. No. I look at 16 specific locations on the  
8 D.N.A. molecule. As I mentioned, these locations vary  
9 greatly from individual to individual, and I'm  
10 identifying the forms of D.N.A. that can occur at each  
11 of these locations.

12 And, also, as I mentioned, those forms are  
13 called alleles. The alleles are identified with a  
14 number, say a 9, 12, 13, 14. A person has 2 alleles  
15 at each location. If I examine the D.N.A. and I get 2  
16 alleles at all 16 locations, then I have obtained a  
17 full D.N.A. profile.

18 Q. So you really only need to find 16 parts,  
19 instead of the whole D.N.A. strain. Is that fair to  
20 say?

21 A. Yes.

22 Q. I'm trying to say it like a layman would say.

23 A. Yes, that's --

24 Q. I know you're -- I know you're laughing at me  
25 because I'm not a scientist, but that's pretty much

1 what it is, right, just 16 locations?

2 A. Yes.

3 Q. Do you always obtain -- once you do that --  
4 do that 16 thing, do you always obtain a full D.N.A.  
5 profile?

6 A. No. Sometimes I only obtain a partial  
7 profile, which means I don't get results from all 16  
8 locations. That could be because of the small amount  
9 of sample that I have to work with, or because the  
10 D.N.A. has degraded. Now, in some occasions I find  
11 more than two alleles at a location, at some or all of  
12 the location. This indicates that it is a mixture and  
13 that this D.N.A. -- that this stain contains D.N.A.  
14 from two or more individuals.

15 Q. But I thought you said a person only has one  
16 D.N.A. to them?

17 A. Yes. But if I have D.N.A. from two different  
18 people and they're combined together into one stain,  
19 then that is indicated in the D.N.A. profile that I --  
20 that I get.

21 Q. So, how would that be possible? How would  
22 that happen? Give us an example of how a mixture  
23 could happen.

24 A. Well, you have -- if the -- if the stain is  
25 from blood, then you could have two persons that are

1 bleeding and each of them contribute to the blood  
2 stain that -- that I test. Someone may be bleeding  
3 themselves, they may have blood from someone else on  
4 their hand and touch something, you know, they've got  
5 it on their hand and they touch something and the  
6 mixture is there.

7 Q. So, if -- again, we're going to use an  
8 example, but we're not going to use my socks this  
9 time. If I touch a pen -- this pen, and I get sweat  
10 on it, perspiration, or I put it in my mouth and get  
11 saliva on it, and then somebody else picks it up and  
12 skin cells come off on it, is that a way a mixture  
13 could happen?

14 A. Yes, correct. I might very well find a  
15 mixture when I determine D.N.A. -- the D.N.A. that's  
16 present on that pen.

17 Q. So that's all -- what does that mean, is just  
18 basically two people may have come in contact with  
19 that one item.

20 A. Correct. Two people have contributed to that  
21 D.N.A. profile.

22 Q. When you have a mixture, does that mean it's  
23 always a 50/50 percent mixture?

24 A. No. It can vary greatly, and depending upon  
25 how much D.N.A. is from one individual and how much is

1 from another. Sometimes most of the D.N.A.s from one  
2 individual and there's just a very little bit of  
3 D.N.A. from the second individual. Sometimes it is a  
4 50/50 mixture. It varies from stain to stain.

5 Q. So when we say the word, "mixture," I just  
6 want to make it clear, we're not talking it's always  
7 half and half. It could be 90 percent of one person's  
8 D.N.A. and 10 percent of somebody else's.

9 A. That's correct.

10 Q. Okay. Can you tell the jury why -- what the  
11 procedure is with law enforcement agencies in this  
12 area in working with the State-run D.P.S. labs and how  
13 they test evidence for them, especially in the area of  
14 D.N.A., how does that work?

15 A. Well, if a law enforcement agency collects  
16 evidence from a crime scene, they can bring it to our  
17 laboratory for analysis. We perform a free service.  
18 They submit it into our laboratory, they fill out a  
19 submission form, turn it into our laboratory and  
20 request analysis on certain items. It's assigned to  
21 an examiner who then examines all the evidence,  
22 looking for biological stains or anything that may be  
23 of evidentiary value, goes through the process of  
24 extracting D.N.A., obtaining D.N.A. profiles, and then  
25 making comparisons to known profiles that the law

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1 enforcement agency submits to us.  
 2 Q. Do any of the local police departments, like  
 3 Corpus Christi Police Department, can they do D.N.A.  
 4 testing?  
 5 A. No. They do not have a D.N.A. unit.  
 6 Q. And do you -- is your lab certified to do  
 7 D.N.A. testing?  
 8 A. Yes, we are. And I -- we are accredited by  
 9 the Association of Crime Lab Directors, and we are  
 10 also accredited by D.P.S. to perform D.N.A. analysis.  
 11 Q. I may have used the wrong word, "certified,"  
 12 it's really accredited.  
 13 A. That's correct.  
 14 Q. Yours is an accredited facility and has been.  
 15 A. Yes.  
 16 Q. I want to direct your attention now to this  
 17 case and I want to ask you a couple of preliminary  
 18 questions. First of all, how many reports were issued  
 19 in this case involving State of Texas versus John  
 20 Henry Ramirez?  
 21 A. There are three reports and one amended  
 22 report.  
 23 Q. Okay. Were those reports either done by you  
 24 or the other lady, Robin Olson Castro?  
 25 A. Yes, they were.

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1 Q. Can you tell us why another person did the  
 2 analyst -- analysis along with you or after you did  
 3 your initial one?  
 4 A. I originally did this analysis in 2005.  
 5 Since that time I have left the bench as a D.N.A.  
 6 examiner and no longer participate in the proficiency  
 7 test cycle, therefore in 2007, a blood sample from  
 8 John Henry Ramirez was submitted to the laboratory,  
 9 and, at that time, I was not performing D.N.A.  
 10 examinations, so this was given the another examiner  
 11 to obtain a D.N.A. profile from him and compare that  
 12 profile to profiles that I had previously obtained in  
 13 2005.  
 14 Q. Okay. Let me back up on the date. Are you  
 15 sure it was -- you got the one from him in 2007 or was  
 16 it 2008?  
 17 A. Let me look. I'm sorry, it was submitted in  
 18 March of 2008.  
 19 Q. So, essentially, for the jury, you did some  
 20 blood testing in D.N.A. with the samples that you had  
 21 at the time, which would have been Pablo Castro, the  
 22 victim in this case; Angela Rodriguez, a suspect in  
 23 this case; and Christina Chavez, another suspect in  
 24 this case?  
 25 A. Yes.

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1 Q. And you didn't -- were not able to do any  
 2 further testing on John Henry Ramirez back in 2005  
 3 because you did not have his blood sample.  
 4 A. That's correct.  
 5 Q. And your blood sample was received by your  
 6 lab this year, I think you said March?  
 7 A. March.  
 8 Q. Of 2008?  
 9 A. Yes, March of 2008.  
 10 Q. Is that when your lab received a blood sample  
 11 of the Defendant, John Henry Ramirez?  
 12 A. Yes, it is.  
 13 Q. Okay. So, essentially, you did initial  
 14 reports with what you had at the time. --  
 15 A. Yes.  
 16 Q. -- right?  
 17 A. Yes.  
 18 Q. And I'm talking about back in 2004. But by  
 19 the time in 2008, you had already been bumped up and  
 20 you are now a supervisor, correct?  
 21 A. That's correct.  
 22 Q. And so you had one of your assistants do the  
 23 -- the rest of the testing once his known sample got  
 24 to your lab.  
 25 A. Yes.

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1 Q. And I'm just trying to get the jury the  
 2 sequence of events. And so based on that another lab  
 3 report was issued by Ms. Castro.  
 4 A. Yes.  
 5 Q. But you, again, supervised that and you have  
 6 her report and you've collaborated with her on those.  
 7 A. Well, I have reviewed her work and reviewed  
 8 her report.  
 9 Q. I keep saying, "collaborated." I didn't mean  
 10 to say it that way. But you're aware of her report  
 11 and the results she obtained.  
 12 A. Yes, I am.  
 13 Q. And did -- and in reviewing her reports, you  
 14 agree with them.  
 15 A. Yes, I do.  
 16 Q. Did I ask you before the trial, some time  
 17 ago, to come up with a chart or help us make a chart  
 18 of all the items that you've tested in this case?  
 19 A. Yes.  
 20 Q. In fact, offhand, there was probably 60, 70  
 21 or more items that were actually tested by the lab,  
 22 correct?  
 23 A. I have to go back and count them, but there  
 24 were a large number of items, yes.  
 25 Q. Did you -- did you and Ms. Castro assist me

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1 by making a chart showing what items were tested and  
2 what the results of those tests were?  
3 A. Yes, we did.  
4 Q. Are those charts -- would those charts help  
5 aid the jury in recognizing the results of your  
6 testing?  
7 A. Yes.  
8 MR. SKURKA: Your Honor, I tender State's  
9 Exhibit 196 and -- well, first of all, I'll tender  
10 them to defense -- to the witness.  
11 Q. (BY MR. SKURKA) Do you recognize what's been  
12 marked as 196 and 197?  
13 A. Yes. This is a chart of the D.N.A. results  
14 that Robin Castro and I prepared for you.  
15 Q. Okay. Could you say the number of the  
16 exhibit, please.  
17 A. It's Exhibit 19 -- State's Exhibit 197.  
18 Q. And what's 196?  
19 A. State's Exhibit 196 is a summary of the  
20 serology results and D.N.A. results of all the items  
21 that were tested.  
22 Q. Again, did you review that with Ms. Olson  
23 Castro and agree with those, too?  
24 A. Yes, I did.  
25 MR. SKURKA: Okay. Your Honor, I've

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1 already previously given this to Defense, but I'll  
2 show them what's marked as 196 and 197, and offer them  
3 into evidence.  
4 MR. GARZA: No objection, Your Honor.  
5 THE COURT: They're admitted.  
6 Q. (BY MR. SKURKA) For the record, I'm going to  
7 show you 196 first. Is that essentially a master list  
8 of all the items that were tested, and 197 would be a  
9 list of the ones that matches were obtained with  
10 people involved in this case?  
11 A. That's correct.  
12 MR. SKURKA: Your Honor, this might be a  
13 good time to take a break, because we still have --  
14 I'm ready to go into the actual evidence.  
15 THE COURT: All right. Let's take a few,  
16 ladies and gentlemen. All rise for the jury.  
17 (Jury exits courtroom.)  
18 (Short recess.)  
19 THE COURT: Have a seat, please.  
20 Okay. We're on the record.  
21 MR. SKURKA: Just briefly, Your Honor.  
22 THE COURT: Yes.  
23 MR. SKURKA: I introduced Exhibits No.  
24 196 and 197 for the jury right before the break.  
25 THE COURT: Okay.

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1 MR. SKURKA: Those charts are so wide  
2 they don't fit on the ELMO projector, so I took the  
3 liberty of making 13 copies of what the exhibits were.  
4 I've showed them to Mr. Garza. I don't think there's  
5 objection to it, but it might be easier for the jurors  
6 to follow along with that --  
7 THE COURT: That's fine.  
8 MR. SKURKA: -- instead of having to keep  
9 going back and forth on the ELMO.  
10 THE COURT: That's fine.  
11 MR. SKURKA: And I've laid them out there  
12 for them.  
13 THE COURT: All right. I'll -- I'll  
14 explain that to the jurors.  
15 MR. SKURKA: Thank you, Judge.  
16 THE COURT: Anything else?  
17 MR. SKURKA: No, Your Honor.  
18 MR. JONES: So we need a legal size ELMO.  
19 THE COURT: I guess so. All right.  
20 Let's bring them in.  
21 MR. SKURKA: I am going to use the ELMO  
22 in some places.  
23 (Jury enters courtroom.)  
24 THE COURT: All right. Be seated,  
25 please.

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1 All right, ladies and gentlemen, before  
2 the break a couple of exhibits were introduced into  
3 evidence. On the bar, there, you have copies of those  
4 exhibits. Each one of you should get one of those.  
5 They apparently don't fit neatly on the ELMO, so we've  
6 given you copies so that you can follow the testimony.  
7 All right. You may proceed.  
8 MR. SKURKA: Thank you, Your Honor. May  
9 I approach?  
10 THE COURT: Yes.  
11 Q. (BY MR. SKURKA) I show you what's now been  
12 marked as State's Exhibit No. 198. Can you identify  
13 that?  
14 A. Yes. State's Exhibit 198 is the copy of the  
15 notes that I took as I examined each item of evidence,  
16 other than the swabbings. And it shows the stains  
17 that were tested and where they were cut from.  
18 Q. For the record, State's Exhibit No. 198 is  
19 actually one -- eight pages, correct?  
20 A. Yes.  
21 Q. And these are from your work notes or  
22 sketches of the items that you tested, correct?  
23 A. That's correct.  
24 MR. SKURKA: I show Exhibit 198 to  
25 Defense Counsel and offer them into evidence.

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1 THE JUROR: Can I ask a question.  
 2 THE COURT: No.  
 3 MR. SKURKA: The jury doesn't have this  
 4 copy.  
 5 THE JUROR: Oh, okay.  
 6 THE COURT: This is a different exhibit.  
 7 MR. JONES: Okay.  
 8 MR. GARZA: No objection, Your Honor.  
 9 THE COURT: It's admitted.  
 10 MR. SKURKA: Judge, just to clarify it  
 11 for the record and the jurors, State's 198 is not the  
 12 same thing they have in their hands. These will fit  
 13 on the ELMO, so we can use that -- ELMO for that, but  
 14 these other charts aren't going to fit on there.  
 15 Q. (BY MR. SKURKA) Okay. Ms. Smith, let's --  
 16 let's pick it up, and I'm going to show you those  
 17 other two exhibits, 196 and 197. And so the jury will  
 18 know which one we're talking about, this diagram I'm  
 19 -- I'm sorry, that chart is what I've referred to as  
 20 the master list, correct?  
 21 A. Yes.  
 22 Q. And that shows, if you look at the last page,  
 23 there was some 62 items tested or looked at?  
 24 A. Yes.  
 25 Q. Now, did you find matches for D.N.A. purposes

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1 on all those 62 items?  
 2 A. No, only on some of them. Only some of the  
 3 items were selected for D.N.A. testing.  
 4 Q. Okay. But that is the list of all the items  
 5 that were given you to look or observe and try to get  
 6 D.N.A. from.  
 7 A. Yes, it is.  
 8 Q. Okay. Why -- I'm sorry, is the second list,  
 9 this chart, that looks more like a horizontal chart  
 10 than a vertical chart, that would be -- where it says  
 11 "D.N.A. Results," that's the one where the matches  
 12 were made, correct?  
 13 A. Yes. Those were the results for all the  
 14 items that I tested for D.N.A.  
 15 Q. Okay. Now, that we have that straight, I  
 16 want to show you, go back to 196, there's -- there's a  
 17 lot of items on there, but some of those items do not  
 18 have -- they say things like, "no testing done," or  
 19 "Trace amount not -- not tested." I guess, what I'm  
 20 trying to ask is, did you try to get D.N.A. from each  
 21 and every one of those 62 items?  
 22 A. No. I selected a representative sample of  
 23 items from certain areas. For example, numerous items  
 24 were submitted to me from a Ford van. I selected a  
 25 representative sample of stains from the Ford van.

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1 Some of my basis in selecting stains was the  
 2 concentration of the stain or how much stain was  
 3 present and the likelihood I felt that I would get a  
 4 D.N.A. profile.  
 5 Q. What do you mean when you say,  
 6 "Representative sample," please?  
 7 A. Well, it's not possible to test every single  
 8 stain that is at a crime scene. D.N.A. testing is  
 9 involved, it's long, and it's a costly procedure. So  
 10 I tested samples from various areas of the van, in  
 11 order to obtain the D.N.A. profiles. If it was deemed  
 12 it was necessary to test -- do additional testing  
 13 later on, so -- just some of the testing failed, then  
 14 that option was used also.  
 15 Q. Let's look at, say, for example, No. 1 on  
 16 that list. It's identified as a "swab from the front  
 17 passenger side door panel of the Ford van." It says,  
 18 "Apparent blood, but no D.N.A. evidence performed --  
 19 analysis performed." Explain why not.  
 20 A. Yes. This was a very faint stain, and so,  
 21 instead I selected the swab from the passenger side  
 22 door handle, rather than the door panel. It would be  
 23 in close proximity to one another.  
 24 Q. Okay.  
 25 A. And obtained a D.N.A. profile.

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1 Q. So, for example, if you're looking at items  
 2 one and two on this list, since you had them both from  
 3 the same area, you only tested one of them.  
 4 A. That's correct.  
 5 Q. That's not to say that wasn't John Henry  
 6 Ramirez' blood on there, that's just to say you didn't  
 7 test it.  
 8 A. I didn't test it, so I can't tell you whose  
 9 blood it was.  
 10 Q. Did you feel the need to test it or did you  
 11 think you had a representative sample?  
 12 A. No, I felt that was a representative sample.  
 13 Q. Looking at No. 3, for an example, "Swab from  
 14 the ignition switch of the Ford van," and it says,  
 15 although there was apparent blood, "No D.N.A. analysis  
 16 were performed." Why not a D.N.A. analysis are  
 17 performed on that?  
 18 A. Again, I selected a nearby location from the  
 19 steering wheel of the Ford van.  
 20 Q. And, for the record, you're looking at No. 4.  
 21 A. No. 4.  
 22 Q. So you actually had two things, one from the  
 23 steering wheel and one from the ignition switch, but  
 24 you just tested one of them because of the proximity  
 25 of the stains to each other.



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1 A. Yes.

2 Q. Is there a need, for example, if you had, oh,  
3 my gosh, six stains from all parts of the steering  
4 wheel, say, we're going around the signal -- the  
5 steering wheel, do you need to test every stain on the  
6 six different locations on the steering wheel?

7 A. I would not typically test every stain. I  
8 would select some stains. What I -- what I'm looking  
9 to do is to, depending upon the circumstances,  
10 associate a victim with the crime scene, a suspect  
11 with the crime scene, or the crime scene with the  
12 victim or the suspect, to interrelate those  
13 participants in the crime. And once I have done that,  
14 then that element has been established.

15 Q. Okay. So, again, would it be necessary to  
16 test all those things?

17 A. No.

18 Q. Earlier in the testimony we had somebody talk  
19 about a pool of blood that was kind of a widespread  
20 pool of blood at the scene. And it was asked whether  
21 they should -- need to examine every two inches of  
22 that stain from the top of the stain to the side of  
23 the stain to the -- each end of the stain. Is that  
24 necessary in something like that?

25 A. No, sir.

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1 Q. So, if the I.D. tech was to testify that he  
2 did not take a stain from each part of the blood  
3 puddle, would that be wrong --

4 A. No, it would not.

5 Q. -- as he trained and your training in  
6 the scientific community, to take a representative  
7 sample?

8 A. Yes.

9 Q. Okay. There was also testimony from an  
10 identification technician that there was a shirt that  
11 had blood spots all around the front of the shirt, and  
12 his testimony was he didn't need to test all 35  
13 bloodstains, he just obtained a representative sample.  
14 Is he doing the right thing there?

15 A. Yes.

16 Q. So that's not unusual to have items submitted  
17 to you that you don't test, ultimately. --

18 A. That's correct.

19 Q. -- for a variety of reasons. So looking at  
20 these 62 items, you didn't -- you may not have tested  
21 all those and you've listed in the charts what didn't  
22 -- what you didn't test, correct?

23 A. Yes.

24 Q. Okay. And you're giving us an explanation of  
25 why they didn't -- why you didn't test it, correct?

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1 A. Yes.

2 Q. Okay. I'm going to switch from that list,  
3 now, to what we call the D.N.A. testing, that's the  
4 master list, and I want to switch to the second list,  
5 if I could, please. Now, your testimony -- and that's  
6 State's Exhibit No. 197?

7 A. Yes, 197.

8 Q. Okay. If everybody has their copy of that,  
9 explain what the -- across the road -- I'm sorry  
10 across the column, what that means.

11 A. Well, the first column describes the item  
12 number and a description of the evidence that was  
13 submitted to me. For example, in the very first row,  
14 it says, "Item 2, apparent blood was detected on the  
15 passenger door handle swab from the Ford van." And  
16 then a description of where it was taken, which is  
17 actually repetitive, it was from the passenger side  
18 door handle. It was then collected by Bill Kirksey  
19 and submitted to our laboratory on August 16th, of  
20 200-- of August 16th of 2004, and it was submitted by  
21 Bill Kirksey. I then examined and performed the test  
22 on that item of evidence.

23 Then the final column, it says, "D.N.A.  
24 Results," describes the type of profile that I  
25 obtained, which was a single source profile, which was

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1 later found to be consistent with the D.N.A. profile  
2 of John Henry Ramirez.

3 And then there's a probability statement.  
4 This is the probability of randomly selecting an  
5 individual out of the population that is unrelated who  
6 could also be a contributor to this profile, and the  
7 probability -- this is just one probability listed.  
8 This probability is 1 in 17.79 quintillion, and --

9 Q. Before we start talking about each thing in  
10 the -- in the chart, tell us what you mean that you  
11 had to do that statistical analysis to get those  
12 numbers, and not just in that case, but how you do it  
13 in D.N.A. testing.

14 A. Correct. Once I have a match, I can perform  
15 a statistical analysis, calculating the frequency of  
16 the profile with a population. And that translates to  
17 if I were to go out into a population and randomly  
18 select someone that's not related to -- that's  
19 unrelated, what is the probability that that person's  
20 D.N.A. profile would also match the evidentiary  
21 profile? And you can see, particularly in this case,  
22 the probability is very small that you would have a  
23 match from someone else.

24 Q. Okay. Let's go back to the list again, the  
25 master list. Did you examine all the items on that

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1 list marked State's Exhibit 197 and found matches on  
 2 just those items?  
 3 A. (No response.)  
 4 Q. I'm looking at 197.  
 5 A. 197, the D.N.A. chart. Yes, I -- I examined  
 6 all of -- I performed testing on all of these items,  
 7 with the exception of some of the known blood samples  
 8 that were submitted.  
 9 Q. I understand. Let's go ahead and go down the  
 10 chart, please, now that it's admitted into evidence.  
 11 What is the No. 1 item on the chart?  
 12 A. No. 1 is Item 2. It's a blood swab from the  
 13 passenger door handle of the Ford van.  
 14 MR. SKURKA: May I approach, Your Honor.  
 15 THE COURT: Yes.  
 16 Q. (BY MR. SKURKA) I'm going to show you what  
 17 we've set aside and has already been admitted into  
 18 evidence as State's Exhibit No. 159. Can you identify  
 19 that?  
 20 A. Yes, I can identify this by my case number  
 21 and my initials on the evidence.  
 22 Q. Did you test State's Exhibit 197?  
 23 A. I tested State's Exhibit 159.  
 24 Q. I'm sorry, 159. I'm getting the numbers  
 25 mixed up. I apologize.

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1 A. Yes, I did.  
 2 Q. And does that -- that item -- 159 correspond  
 3 to the No. 1 one on the list?  
 4 A. Yes, it does.  
 5 Q. Okay. I think I've got your copy, and you've  
 6 got the -- I've got the one that's marked State's  
 7 Exhibit 197.  
 8 A. This is mine.  
 9 Q. Okay, that's yours?  
 10 A. This is mine. It was in my case file.  
 11 Q. Okay.  
 12 A. This is the State's exhibit. You can use  
 13 that, if you would like to.  
 14 Q. That's what I'd like to do because I'd like  
 15 for you to put the exhibit number that it went to. If  
 16 you would write in the chart, on 197, what exhibit  
 17 number it was in that little box, just put SX-159.  
 18 A. (Witness complying.)  
 19 Q. So, looking at 159, which is identified as  
 20 that swab from the Ford van passenger side door  
 21 handle, whose blood was on that?  
 22 A. The D.N.A. profile obtained from it was  
 23 consistent with the D.N.A. profile of John Henry  
 24 Ramirez. The probability of selecting an unrelated  
 25 person at random who could also be a contributor of

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1 this D.N.A. profile would be would be 1 in 17.79  
 2 quintillion among Caucasians, or 1 in 46.88 sextillion  
 3 among Blacks, or 1 in 20.41 quintillion among  
 4 Hispanics. So based upon these probabilities, I could  
 5 say to a reasonable degree of scientific certainty  
 6 that John Henry Ramirez is the source of the stain on  
 7 this swab.  
 8 Q. And why is that? Because how many people are  
 9 on the Earth's surface?  
 10 A. About six and a half billion.  
 11 Q. And how much is a quintillion?  
 12 A. It's a very large number.  
 13 Q. It's over that, isn't it?  
 14 A. It has a -- it has a -- quintillion has 15  
 15 place values behind the decimal.  
 16 Q. So you can say with a reasonable scientific  
 17 certainty that John Henry Ramirez left the blood on  
 18 the door handle.  
 19 A. Yes, sir.  
 20 Q. Let's go to the next item. No. 2 says it's  
 21 "apparent blood on the steering wheel of Ford van."  
 22 And I'm going to show you what's been marked as  
 23 State's Exhibit -- and introduced as State's Exhibit  
 24 157. Can you identify that?  
 25 A. Again, I can identify this by my case number

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1 and initials.  
 2 Q. Does 157 represent the swab from the steering  
 3 wheel of the Ford van?  
 4 A. Yes, it does.  
 5 Q. And, again, could you put the State's exhibit  
 6 number on that.  
 7 A. Yes, sir.  
 8 Q. What was the result of testing No. 2 to  
 9 "Apparent blood on steering wheel of the Ford van"?  
 10 A. I obtained a mixture. The minor component of  
 11 the mixture was consistent with Pablo Castro. The  
 12 major component of the mixture was consistent with  
 13 John Henry Ramirez.  
 14 Q. So would it be fair to say you found both the  
 15 victim, Pablo Castro's blood on there, and John Henry  
 16 Ramirez on that swab?  
 17 A. On --  
 18 Q. On the steering wheel van -- steering wheel  
 19 of the van.  
 20 A. Yes, sir. The probability of selecting  
 21 unrelated person at random who could have contributed  
 22 the minor component that was consistent with Pablo  
 23 Castro would be approximately 1 in 833 for Caucasians,  
 24 1 in 722 for Blacks, and 1 in 393 for Hispanics in a  
 25 world population -- I stand corrected, it's 6.3



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1 billion. In the major component of the profile that  
2 was consistent with John Henry Ramirez, again, I could  
3 state to a reasonable degree of scientific certainty  
4 that John Henry Ramirez is the source of the stain.

5 Q. Okay. So we know now that the source of the  
6 blood on the steering wheel of the Ford van was Pablo  
7 -- was John Henry Ramirez.

8 A. Yes, sir.

9 Q. Okay. Let's go to the next one, which is  
10 marked No. 3 in the list, and it's been identified as  
11 "Stains A & B, apparent blood on Pablo Castro's  
12 jeans." Did you test Pablo Castro's jeans?

13 A. Yes, sir.

14 Q. And I'm going to show you what's been marked  
15 as State's Exhibit No. -- do you recognize that item  
16 I've placed in front of you?

17 A. Yes. Again, I recognize this by my case  
18 number and initials.

19 Q. What is it?

20 A. 106. It's State's Exhibit 106.

21 Q. What is it?

22 A. These are jeans from Pablo Castro.

23 Q. Did you also have some sketches to show where  
24 exactly the stains were located on the jeans?

25 A. Yes, I do.

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1 Q. I'm going to show you what's been marked  
2 State's Exhibit 198, up on the ELMO. There should be  
3 a laser pointer up there. Show us, using the sketch,  
4 where the bloodstains, if any, were found on there and  
5 which are the ones you tested.

6 A. Well, these are my sketchings of the stains  
7 that were on the pants. I selected the stain, here,  
8 Stain A, and tested it for D.N.A.; and I selected  
9 Stain B down here, and tested it for D.N.A.

10 Q. Where were -- where was all the bloodstains  
11 on all those, how many places was it in?

12 A. All of these have the appearance of blood  
13 that you see marked on this -- on the pants.

14 Q. So there's numerous where that shaded area is  
15 there.

16 A. Yes. In fact, this is pretty much  
17 blood-soaked. In this area was spottings of blood.  
18 I'm looking for staining by their size and shape that  
19 may be from someone other than the victim. Typically,  
20 blood on the victim's clothing is from the victim.

21 Q. So of all these other bloodstains you just  
22 took two representative samples, here and here --

23 A. Right.

24 Q. -- correct? And can you tell the jury what  
25 the results of that sample was?

95

1 A. The D.N.A. profile obtained was a single  
2 source profile consistent with Pablo Castro from both  
3 Stains A and B.

4 Q. So, again, to a scientific certainty, Pablo  
5 Castro's blood are the ones that's on those jeans.

6 A. Yes. In this instance, the statistics for  
7 each population group are such that I could state to a  
8 reasonable scientific certainty those stains are from  
9 Pablo Castro.

10 Q. Thank you. Let's go down to the next list.  
11 And this one, I think there's about -- the next three,  
12 which is on the list as 4, 5 and 6. I'm going to show  
13 you an item that's already been admitted as State's  
14 Exhibit 148. Can you look at that and examine it and  
15 see if you recognize that.

16 A. Yes. Again, I recognize it by my case number  
17 and initials.

18 Q. What is it?

19 A. It is a T-shirt found inside the Ford van.

20 Q. Okay. And can you open -- can you hold it up  
21 and display it for the jury, please.

22 A. (Witness complying.)

23 Q. Is that the same shirt you tested?

24 A. Yes.

25 Q. And can you show us where you took the

96

1 samples from.

2 A. I cut a blood stain from here, marked Stain  
3 A, and a blood stain from here marked Stain B. I also  
4 took cuttings from the collar in an attempt to find  
5 epithelial cells, Stain C and Stain D.

6 Q. So two of the items you were looking for  
7 blood, and two you were looking for epithelial cells.

8 A. Yes.

9 Q. Let's go to the sketch now as part of State's  
10 Exhibit 198. Is that a sketch of the same shirt that  
11 you did in your work?

12 A. Yes, it is.

13 Q. Okay. Using the laser pointer, can you show  
14 us where the bloodstains were and where you took the  
15 sketch -- the cuttings or samples.

16 A. I collected a sample here, marked Stain A,  
17 and a sample here, marked Stain B, and then cut from  
18 the neckline, Stain C and Stain D.

19 Q. Would it be fair to say there was more  
20 bloodstains than just the two that you tested here?

21 A. Yes. Those are sketches of other areas that  
22 have the appearance of blood.

23 Q. Okay. Did you test all those?

24 A. No, I did not.

25 Q. Did you need to test all those?

97

1 A. No, I did not.

2 Q. Did you feel that this was a representative  
3 sample of the bloodstains from that area?

4 A. Yes, sir.

5 Q. Why do you look at the neckline for  
6 epithelial cells?

7 A. This T-shirt was found inside the van, so I  
8 looked at the neckline because it was relatively free  
9 of bloodstains, and that's an area that tends to rub  
10 against the body. I'm looking to possibly identify  
11 who may have worn the T-shirt.

12 Q. So a collar of the shirt, for example, would  
13 rub against the skin, causing some of those epithelial  
14 cells to rub off?

15 A. It can, yes.

16 Q. Okay. Now that you've looked at that exhibit  
17 and tested it, what were the results of your stain  
18 analysis or the epithelial analysis on that exhibit?

19 A. The D.N.A. profile obtained from Stains A --  
20 from Stains A and Stain B were consistent with the  
21 D.N.A. profile of Pablo Castro.

22 Q. Let's take that one at a time. I'm sorry, go  
23 ahead, were you just going to tell them the  
24 probability?

25 A. Yes. I can say to a reasonable degree of

98

1 scientific certainty that Pablo Castro is the source  
2 of Stain A and Stains B.

3 Q. So, for the record, the white T-shirt that  
4 was located inside the white (sic) van, that blood  
5 here on the front of the shirt belonged to Pablo  
6 Castro -- came from Pablo Castro.

7 A. Stains A and B came from Pablo Castro,  
8 excluding that he --

9 Q. Red van.

10 A. -- has an identical twin.

11 Q. I meant to say red van, instead of white --  
12 white van. Okay, so those came from Pablo Castro.  
13 What about the results of the epithelial cells from  
14 the neckline?

15 A. I tested Stain C and obtained a mixture that  
16 was consistent with John Henry Ramirez, Angela  
17 Rodriguez, and Pablo Castro. And then I have  
18 probabilities for those mixtures.

19 Q. Tell us what those are, please.

20 A. The stains -- what was consistent with John  
21 Henry Ramirez, he could not be excluded, the  
22 probability of selecting a unrelated person at random  
23 who could also be a contributor to Stain C on this  
24 item is approximately 1 in 7.199 billion for  
25 Caucasians, 1 in 244.2 billion for Blacks, and 1 in

99

1 1.638 billion for Hispanics.

2 Q. So what does -- who -- you said this was a  
3 mixture. So it is simply a mixture of John Henry  
4 Ramirez, Angela Rodriguez and Pablo Castro's.

5 A. Correct.

6 Q. How can we have three people mixed in the  
7 same place?

8 A. Well, there are cells present on that collar  
9 from three individuals.

10 Q. And, just for record to be clear, those  
11 aren't bloodstains.

12 A. I -- there was no visible bloodstain there.

13 Q. But you got -- what I meant was the D.N.A.  
14 was obtained from the skin cells, not the blood.

15 A. When I don't see blood, it's logical to  
16 assume that it comes from skin cells.

17 Q. Okay. And all three peoples' skin cells were  
18 on that shirt.

19 A. I mean, there is a possibility of there being  
20 some blood in a minute amount that could not be  
21 detected.

22 Q. Okay.

23 A. I'm -- I'm sorry, but -- and that could be --  
24 it could be contamination from one stain over to  
25 another. And I have the statistical probabilities for

100

1 the matches to Angela Rodriguez and Pablo Castro.

2 Q. I -- I think those are probably already shown  
3 in the charts. I just want to verify that all of  
4 three of them's skin cells were on Stain C.

5 A. Correct.

6 Q. And Stain D, what did that show? And I'm at  
7 the top of the second page, would be No. 6.

8 A. Stain D was consistent with a mixture from  
9 Angela Rodriguez and John Henry Ramirez.

10 Q. So on that stain -- which one is D, up there?  
11 This is D.?

12 A. Yes.

13 Q. So on that section of the cutting you took,  
14 it consists of Angela Rodriguez and John Henry  
15 Ramirez'?

16 A. Correct.

17 Q. Okay. Let's go to the next item, which is  
18 marked No. 7, and if I could approach and show you the  
19 next item, and I'll give you the number, would be  
20 State's Exhibit No. 153 and 162. That would be --  
21 153, identified as the Visa card itself, and 162 has  
22 been identified as the blood sample or swab from the  
23 Visa card.

24 Now, for the record, did you test the card  
25 or the swab?

<p style="text-align: right;">101</p> <p>1 A. I test the swab.</p> <p>2 Q. Okay. But the swab came from the Visa card.</p> <p>3 A. Yes, it was identified to me as coming from</p> <p>4 the Visa card.</p> <p>5 Q. What was the results of the testing of the</p> <p>6 blood -- apparent blood on the Visa card that said</p> <p>7 Gilbert Lopez, Jr. On it?</p> <p>8 A. I obtained a partial D.N.A. profile that was</p> <p>9 consistent with John Henry Ramirez.</p> <p>10 Q. Was there a high probability of it's his</p> <p>11 blood?</p> <p>12 A. The probability of selecting unrelated person</p> <p>13 at random who could be a source of this profile is 1</p> <p>14 in 243.6 billion for Caucasians, 1 in 17.36 trillion</p> <p>15 for Blacks, and 1 in 496.8 billion for Hispanics.</p> <p>16 Q. So with a reasonable degree of scientific</p> <p>17 certainty, did -- who left the blood on that Visa</p> <p>18 card?</p> <p>19 A. Well, I'm not able to make that statement on</p> <p>20 a partial profile. I just have to leave it with the</p> <p>21 probability that you have. That's the probability of</p> <p>22 going out into the population randomly selecting an</p> <p>23 individual that their profile would also match this.</p> <p>24 Q. That's the difference of having a full</p> <p>25 profile and a partial profile.</p>	<p style="text-align: right;">103</p> <p>1 Pablo Castro?</p> <p>2 A. Yes, sir.</p> <p>3 Q. The next item were some -- I'm looking at No.</p> <p>4 9 on the list, is apparent blood on pizza receipts.</p> <p>5 I'm going to show you what's been marked as 161 and</p> <p>6 160. Those have been identified to the jury as coming</p> <p>7 from the pizza receipts found in Item 152. Did you test</p> <p>8 the pizza receipts in this case?</p> <p>9 A. This is a separate receipt.</p> <p>10 Q. I know, 160 and 161. Which one did you test,</p> <p>11 do you recall?</p> <p>12 A. I repeated State's Exhibit 160.</p> <p>13 Q. Okay. What was the result of your analysis</p> <p>14 on the pizza receipt?</p> <p>15 A. It was apparent blood and I obtained a</p> <p>16 partial mixture D.N.A. profile consistent with Angela</p> <p>17 Rodriguez and Pablo Castro.</p> <p>18 Q. So, again, the -- the partial mixture means</p> <p>19 that there was blood coming from Angela Rodriguez and</p> <p>20 Pablo Castro there.</p> <p>21 A. Consistent with Angela Rodriguez and Pablo</p> <p>22 Castro.</p> <p>23 Q. Angela Rodriguez and Pablo Castro. So we</p> <p>24 have two people on that.</p> <p>25 A. Correct. And the probability of randomly</p>
<p style="text-align: right;">102</p> <p>1 A. Yes, sir.</p> <p>2 Q. Okay. But that is -- it would be fair to say</p> <p>3 that is a high probability; is it not?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Let's go to the next one. I'm going to show</p> <p>6 you State's Exhibit No. 163 and State's Exhibit No. --</p> <p>7 where is the number? Oh, it's on the bottom. I'm</p> <p>8 sorry. On the bottom itself, 150 and 163.</p> <p>9 A. I have 163 for this.</p> <p>10 Q. This is 162.</p> <p>11 A. 153.</p> <p>12 Q. 153. Okay. The next item I was showing you</p> <p>13 is 163 and 150. And those have been identified -- 163</p> <p>14 has been identified as a swab taken from this vodka</p> <p>15 bottle. I know you didn't look at the bottle itself,</p> <p>16 you looked at the swab, correct?</p> <p>17 A. Yes.</p> <p>18 Q. Tell the jury what the results of testing the</p> <p>19 swab on the vodka bottle would be.</p> <p>20 A. I obtained a single source profile that was</p> <p>21 consistent with Pablo Castro. So I could state to a</p> <p>22 reasonable degree of scientific certainty Pablo Castro</p> <p>23 is the source of the stain, excluding an identical</p> <p>24 twin.</p> <p>25 Q. So the blood found on that bottle came from</p>	<p style="text-align: right;">104</p> <p>1 selecting a person who would match the profile</p> <p>2 consistent with Angela Rodriguez is 1 in 545.6 billion</p> <p>3 for Caucasians, 1 in 474.8 trillion for Blacks, and 1</p> <p>4 in 13.13 billion for Hispanics. And then, likewise,</p> <p>5 for Pablo Castro, the probability of a random person</p> <p>6 matching this profile is 1 in 421.2 million for</p> <p>7 Caucasians, 1 in 17.12 billion for Blacks, and 1 in</p> <p>8 154.1 million for Hispanics.</p> <p>9 Q. But the bottom line is the blood on the pizza</p> <p>10 receipt looks like it came from Angela Rodriguez and</p> <p>11 Pablo Castro?</p> <p>12 A. That's correct.</p> <p>13 Q. The next item is "apparent blood on an</p> <p>14 armrest swab from the Dodge van." And I show you</p> <p>15 what's been marked as State's Exhibit 165. Did you</p> <p>16 test the swab contained in 165 from the armrest of the</p> <p>17 Dodge van?</p> <p>18 A. Yes, I did.</p> <p>19 Q. With what results?</p> <p>20 A. There was apparent blood with a profile that</p> <p>21 was consistent with Pablo Castro. Again, I could</p> <p>22 state to a reasonable degree of scientific certainty</p> <p>23 Pablo Castro is the source of this stain.</p> <p>24 Q. So you can explain -- you can tell the jury</p> <p>25 that Pablo Castro's blood was on the armrest of the</p>

105

1 Dodge van?

2 A. That's correct.

3 Q. And the next item is dollar bills. And I'm

4 on the top of page 3. Did you test some dollar bills

5 in this case?

6 A. Yes, sir.

7 Q. I show you what's been marked as State's

8 Exhibit No. 167, which is -- was reported to be a swab

9 taken from Item No. 151, the dollar bills. Do you

10 recognize that swab?

11 A. Yes, I do.

12 Q. What is it? I'm sorry, I think I've already

13 explained what it is. Let just ask you what the

14 results of your testing was.

15 A. It was a swabbing of an apparent bloodstain

16 on a dollar bill in the Ford van. I obtained a

17 mixture of Pablo -- that was -- the major component of

18 the mixture was consistent with Pablo Castro, and

19 therefore, I could state to a reasonable degree of

20 scientific certainty the stain originated from Pablo

21 Castro.

22 Q. So we know Pablo Castro's blood was on that

23 dollar bill found under the Dickies pants in the Ford

24 van.

25 A. Yes, sir.

106

1 Q. The next item is No. 12 on the list, which is

2 the "apparent blood on gearshift from the Ford van."

3 Did you take a swabbing -- or test a swabbing from the

4 gearshift lever on the swab on the Ford van?

5 A. Yes, I did.

6 Q. And, again, the -- the gearshift lever has

7 been identified as State's Exhibit 155, but I'll show

8 you the exhibit of the swab, which is 166. You have

9 that?

10 A. Yes.

11 Q. Whose blood was found on the gearshift lever

12 of the Ford van?

13 A. I obtained a profile consistent with Pablo

14 Castro, and I could state to reasonable degree of

15 scientific certainty he is the source of the stain.

16 Q. So Pablo Castro's blood was found on the

17 gearshift lever.

18 A. Yes, sir.

19 Q. The next item is reported to be a Bic lighter

20 found in the Ford van. Did you test a swab or the Bic

21 lighter itself in that case?

22 A. Yes, sir. I tested the swab.

23 Q. Okay. And, for the record, the Bic lighter

24 has already been introduced as State's Exhibit No.

25 156, and 164 would be the swab taken from the

107

1 gearshift lever. Did you test that swab from the Bic

2 lighter?

3 A. Yes, I did. It was an apparent --

4 Q. With what results?

5 A. It was an apparent bloodstain consistent with

6 John Henry Ramirez, and I could state to a reasonable

7 degree of scientific certainty that John Henry Ramirez

8 is the source of this blood stain, excluding an

9 identical twin.

10 Q. So your testimony would be that John Henry

11 Ramirez left the blood on that Bic lighter.

12 A. Yes, sir.

13 Q. How about the next one where it said,

14 "Apparent blood on cloth steering wheel cover," what

15 were the results on that?

16 A. I did not obtain a D.N.A. profile that was

17 interpretable.

18 Q. Explain to the jury when that means.

19 A. Either the quality or quantity of the data

20 was such that I could not make a comparison.

21 Q. There just wasn't enough to test or it was

22 too degraded to test?

23 A. I -- in my opinion, it was too degraded to

24 test.

25 Q. Is that unusual for blood?

108

1 A. It does happen.

2 Q. Okay. Let's go to the next thing which

3 is "apparent blood from envelope swab from the parking

4 lot." I believe that would be swab No. -- State's

5 Exhibit No. 108. 108. Did you test the swab in

6 State's Exhibit No. 108 that's coming from the

7 envelope from the parking lot containing -- envelope

8 containing a pay stub from the parking lot?

9 A. Yes, I did. There was apparent blood. The

10 D.N.A. profile was consistent with that of Pablo

11 Castro, and I could state to a reasonable degree of

12 scientific certainty Pablo Castro is the source of

13 this stain.

14 Q. So that was Pablo Castro's blood on the pay

15 stub and envelope.

16 A. Yes, sir.

17 Q. The next page, and I'm looking at the top of

18 page 4, did you then test a "swab from the Ford van

19 front passenger side door pocket"?

20 A. Yes, I did.

21 Q. That has been admitted -- that swab has been

22 admitted in evidence as State's Exhibit 158. And

23 going across the chart, what was the results of your

24 analysis of the blood on the Ford van front passenger

25 side door pocket?



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1 A. It was an apparent blood stain. The D.N.A.  
2 profile was consistent with John Henry Ramirez, and I  
3 could state to a reasonable degree of scientific  
4 certainty that John Henry Ramirez is the source of  
5 this stain, excluding an identical twin.

6 Q. So the Defendant in this case, John Henry  
7 Ramirez, left the blood on the front door pocket?

8 A. Yes, sir.

9 Q. The next item has several things. I'm  
10 looking -- I'm sorry, yeah, on Item 58-F that you've  
11 labeled in your chart, that is "Christina Chavez'  
12 white tank top." And ask you to open this up, please.

13 A. It is packaged well.

14 Q. We know, we've spent a day yesterday  
15 unpackaging a lot of stuff. If you could display that  
16 item to the jury, please, and tell us if you tested  
17 that item.

18 A. This is the item.

19 Q. Identified as Christina Chavez' undershirt or  
20 muscle shirt?

21 A. That's correct. I tested several stains and  
22 I cut stains from here, Stain A, Stain B and Stain C  
23 from the back of the T-shirt.

24 Q. How about the front? Can you show us the  
25 front of the T-shirt?

110

1 A. The front of the T-shirt shows areas that I  
2 tested for the presence of blood. I did not cut  
3 stains from the front of the shirt.

4 Q. I'm going to show you that diagram that was  
5 introduced in evidence, 198. I say, "diagram," it's  
6 really a sketch, I suppose. Using a laser pointer,  
7 where is the front of the shirt in that picture?

8 A. This is the front of the shirt.

9 Q. And can you show us where you saw  
10 bloodstains, first, and then show us the bloodstains  
11 that you tested.

12 A. Well, there are some weak staining here that  
13 I did some testing on that was positive for apparent  
14 blood, but the stains are very small and faint. This  
15 is the back of the shirt. On the back of the shirt we  
16 have Stain A, Stain B and Stain C that I also tested  
17 for the presence of blood, and I cut these stains for  
18 possible D.N.A. analysis.

19 Q. Why didn't you test or cut out samples from  
20 the front of the shirt?

21 A. The stains were very small and the size of  
22 the stain didn't lend them well for D.N.A. testing.

23 Q. So you just decided to do the ones on the  
24 back. Did you figure that was a representative  
25 sample?

111

1 A. Yes, sir.

2 Q. What were the results of testing the stains  
3 on Christina Chavez' T-shirt or tank top?

4 A. From Stain A, this stain, I obtained a  
5 mixture. The major component of that mixture was  
6 consistent with Pablo Castro, to the extent that I  
7 could say to a reasonable degree of scientific  
8 certainty Pablo Castro is the source of Stain A.

9 Q. So that's Pablo Castro's blood on the back of  
10 Christina Chavez' shirt?

11 A. Yes, sir.

12 Q. And the other stain, Stain C?

13 A. I tested Stain C, an apparent bloodstain, and  
14 obtained a D.N.A. profile consistent with John Henry  
15 Ramirez. I could state to a reasonable degree of  
16 scientific certainty John Henry Ramirez is the source  
17 of Stain C on the T-shirt.

18 Q. So your testimony would be John Henry  
19 Ramirez, the Defendant in this case, left his blood on  
20 the back of Christina's tank top.

21 A. Yes, sir.

22 Q. The next clothing item I have to show has  
23 been introduced as the shorts worn by the other  
24 Co-Defendant in this case, Angela Rodriguez. And I'm  
25 going to ask you to go ahead and open that up and tell

112

1 us if you tested that.

2 A. I did not get the State's exhibit number from  
3 the T-shirt written down.

4 MR. SKURKA: What's the number for that.  
5 It's on the other bag. Let me get it for  
6 you.

7 Would that be 199, Mary?

8 COURT REPORTER: No, I don't -- the next  
9 number, or what.

10 MR. SKURKA: The one that says Angela  
11 Rodriguez' clothes.

12 THE WITNESS: Christina Chavez, the  
13 T-shirt.

14 MR. SKURKA: I'm sorry, Christina Chavez.  
15 (Pause in proceedings.)

16 MR. SKURKA: 191. Thank you, Mary.

17 COURT REPORTER: You're welcome.

18 Q. (BY MR. SKURKA) Okay. Now, we're going to  
19 the one that's been marked as Angela Rodriguez'  
20 shorts, and its number is --

21 MR. SKURKA: I think that would be -- is  
22 that 190, Mary?

23 COURT REPORTER: On 190, I have "Clothes  
24 of Angela Rodriguez."

25 MR. SKURKA: That's 190, then.

113

1 (Witness opening package.)

2 Q. (BY MR. SKURKA) Okay. Now that you've held

3 them up to the jury, can you describe them and where

4 the stains were that you found on those shorts.

5 A. These are the blue jean shorts from Angela

6 Rodriguez. I've tested various stains for the

7 presence of blood and selected cuttings from Stain A,

8 Stain B and from the back of the shorts, Stain C.

9 Q. Okay. We've put the sketch up there behind

10 you. And using the laser pointer, can you show us

11 where the stains were and where you took the cuttings

12 from, please.

13 A. From the front of the shorts, Stain A; I took

14 a cutting of Stain B; and a cutting of Stain C; and

15 Stains A and B were tested for D.N.A.

16 Q. Were there more stains, though, besides just

17 the ones you tested, correct?

18 A. Yes, sir.

19 Q. Again, did you take a representative sample

20 from those shorts, instead of testing every stain on

21 the shorts?

22 A. Yes, sir.

23 Q. Tell the jury what the results of your blood

24 testing was, your D.N.A. testing, on the shorts worn

25 by Angela Rodriguez.

114

1 A. The D.N.A. profile I obtained from Stain A

2 was consistent with a mixture. Pablo Castro was the

3 major component of the mixture, so I could state to a

4 reasonable degree of scientific certainty Pablo Castro

5 is the source of Stain A.

6 Q. And which one is Stain A, again?

7 A. Stain A is this stain.

8 Q. Thank you.

9 A. And Stain B, I obtained a profile consistent

10 with Pablo Castro. Again, I could state with a

11 reasonable degree of scientific certainty Pablo Castro

12 is the source of Stain B.

13 Q. So your testimony would be that Pablo

14 Castro's bloods were on the front of Angela Rodriguez'

15 shorts?

16 A. Yes, sir.

17 Q. Two more items I need you to look at. What's

18 been marked State's Exhibit No. 189, and ask you if

19 you can take the contents of that out and examine it,

20 please. It's already been opened. Hopefully, you

21 don't have to do that again.

22 A. (Witness complying.)

23 Q. Now that you've removed the contents of that

24 exhibit, can you display it to the jury and tell us

25 whether you tested that item.

115

1 A. Yes. This is a towel collected from Brewster

2 and Stroman. I examined the item and selected two

3 stains for testing.

4 Q. How many bloodstains were on that towel,

5 altogether?

6 A. There are numerous stains on the towel.

7 Q. Okay. And do cuttings indicate that -- where

8 you took them from or to where?

9 A. Yes. I selected Stain A from this location

10 and Stain B from this location.

11 Q. Does that correspond with the sketch that we

12 have on the board behind you of State's Exhibit No. --

13 A. 189.

14 Q. -- 189?

15 A. Yes, sir. This is Stain A from the towel and

16 then Stain B from the towel.

17 Q. Okay. Again, did you need to test all the

18 blood from all that towel?

19 A. No, sir.

20 Q. Tell the jury what the results of the stain

21 testing that you did on the white towel found from the

22 brush along Brewster Street.

23 A. Stain A, the D.N.A. profile was consistent

24 with John Henry Ramirez. I can state to a reasonable

25 degree of scientific certainty John Henry Ramirez is

116

1 the source of the stain, excluding identical twins;

2 and from Stain B, I obtained a mixture. A major

3 component of that mixture was from John Henry Ramirez.

4 Again to a reasonable degree of scientific certainty,

5 John Henry Ramirez is the source of Stain B.

6 Q. So that's John Henry Ramirez, the Defendant's

7 blood on that rag?

8 A. Yes, sir.

9 Q. The next item that you tested is listed as

10 apparent bloodstain on the bottom of the sandal? Did

11 you receive that item to test?

12 A. Yes, sir.

13 Q. What was the results of that testing from the

14 bloodstain found on the bottom of the sandal?

15 A. I obtained a partial D.N.A. profile

16 consistent with Pablo Castro.

17 Q. When you say, "partial profile," what does

18 that mean, again?

19 A. It means I was not able to obtain data from

20 all 16 locations.

21 Q. But you did find enough to do a partial

22 profile?

23 A. Yes, sir.

24 Q. And does that show that Pablo Castro could

25 have been the contributor for that blood on the



<p>117</p> <p>1 sandal?</p> <p>2 A. Yes, sir.</p> <p>3 Q. The last four things I want to show you, and</p> <p>4 I think we'll be through, this was -- I think this was</p> <p>5 admitted --</p> <p>6 COURT REPORTER: It's on the bottom.</p> <p>7 THE WITNESS: State's Exhibit --</p> <p>8 Q. (BY MR. SKURKA) It's on the bottom, sorry.</p> <p>9 State's Exhibit No. 85. I forgot to give you the</p> <p>10 number for that sandal. That is the sandal that you</p> <p>11 just testified that had Pablo Castro's blood on it,</p> <p>12 right?</p> <p>13 A. Yes, sir. I received a swab from the sandal.</p> <p>14 Q. A swab from that. And go ahead and put the</p> <p>15 number of the sandal, 85.</p> <p>16 A. (Witness complying.)</p> <p>17 Q. Okay. These last few things are 107, 194 and</p> <p>18 195. On your chart you have it listed as blood sample</p> <p>19 of Pablo Castro. So what number would -- State's</p> <p>20 exhibit number would that be to put on your chart?</p> <p>21 A. State's Exhibit 107.</p> <p>22 Q. And, for the record, that's a known sample of</p> <p>23 Pablo Castro?</p> <p>24 A. Yes, sir.</p> <p>25 Q. Okay. The next thing is blood sample of</p>	<p>119</p> <p>1 questions I have. Thank you, Ms. Smith.</p> <p>2 THE COURT: You want to --</p> <p>3 MR. GARZA: Can we wait till after lunch,</p> <p>4 Your Honor?</p> <p>5 THE COURT: Yes, you can. All right,</p> <p>6 ladies and gentlemen, here's -- we're going to do</p> <p>7 something a little bit different today. Don't -- I'm</p> <p>8 not going to need you till 2:00 today, so take a</p> <p>9 leisurely lunch, but we'll see you back at 2:00.</p> <p>10 All rise for the jury.</p> <p>11 (Jury exits courtroom.)</p> <p>12 THE COURT: Okay. Now, Mr. Garza --</p> <p>13 MR. GARZA: Your Honor --</p> <p>14 MR. SKURKA: Shall we approach, Your</p> <p>15 Honor?</p> <p>16 MR. GARZA: Yeah, we'd rather do that,</p> <p>17 Your Honor --</p> <p>18 THE COURT: Okay.</p> <p>19 MR. JONES: -- or if we could ask the</p> <p>20 Court to clear the courtroom, so I can take up a</p> <p>21 matter.</p> <p>22 THE COURT: Okay. Let's just wait till</p> <p>23 the jurors clear the floor and we'll take a little</p> <p>24 break and we'll have a little conference.</p> <p>25 (Pause in proceedings.)</p>
<p>118</p> <p>1 Angela Rodriguez, and do you have an exhibit that</p> <p>2 corresponds to that?</p> <p>3 A. State's Exhibit 194 contains a sample from</p> <p>4 Angela Rodriguez and Christina Chavez.</p> <p>5 Q. Could you go ahead and write that in on the</p> <p>6 chart, too, now that you have the State's exhibit</p> <p>7 numbers.</p> <p>8 A. (Witness complying.) And State's Exhibit</p> <p>9 195 contains a known blood sample from John Henry</p> <p>10 Ramirez.</p> <p>11 Q. Okay. Could you write that in the chart,</p> <p>12 please.</p> <p>13 A. (Witness complying.)</p> <p>14 Q. And then, finally, for the record, all those</p> <p>15 blood samples of Pablo Castro, Angela Rodriguez,</p> <p>16 Christina Chavez and John Ramirez that were just shown</p> <p>17 to you, those were the samples you used to identify</p> <p>18 those other exhibits, correct?</p> <p>19 A. Those were the samples that I obtained the</p> <p>20 D.N.A. profiles from to compare to the other exhibits,</p> <p>21 yes.</p> <p>22 Q. Just as you said at the beginning, you have a</p> <p>23 known sample and test it against these other samples.</p> <p>24 A. Yes, sir.</p> <p>25 MR. SKURKA: I think that's all the</p>	<p>120</p> <p>1 (Proceedings continued outside presence of</p> <p>2 jury.)</p> <p>3 THE COURT: All right. Let's on the</p> <p>4 record.</p> <p>5 Mr. Ramirez, I understand from your</p> <p>6 attorneys that you may want to plead guilty.</p> <p>7 THE DEFENDANT: I might.</p> <p>8 THE COURT: All right. It's your choice.</p> <p>9 THE DEFENDANT: Yes, sir.</p> <p>10 THE COURT: Okay. It's not your</p> <p>11 attorney's choice, it's always your choice, okay?</p> <p>12 I'm going to take a little bit of extra</p> <p>13 time. You know, that's why -- that's why we're not</p> <p>14 bringing the jury back until 2:00. This is an</p> <p>15 important decision for you to make. It is your</p> <p>16 choice, but I do want you to go over these -- over</p> <p>17 your options with your attorneys, okay? That's why</p> <p>18 I'm -- that's why I'm giving this extra time for you</p> <p>19 to do that, okay?</p> <p>20 These attorneys are very well experienced</p> <p>21 in capital cases. They have probably tried more</p> <p>22 capital cases than any two defense lawyers in the</p> <p>23 county. That's why I appointed them to represent you,</p> <p>24 okay? You must know, and, of course, they've probably</p> <p>25 already told you this, but you must know that even if</p>

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1 you do plead guilty on the guilt or innocence phase,  
2 then we'd still go into the punishment phase because  
3 the punishment phase is not a part of the phase that  
4 the law allows you to plead guilty when the State  
5 seeks the death penalty, okay? They've probably  
6 already told you that, but I wanted to inform you of  
7 that on the record, okay?

8 THE DEFENDANT: Okay.

9 THE COURT: So, I want -- I want to --  
10 you're going to go, I guess, visit with him --

11 MR. GARZA: Right, Your Honor.

12 MR. JONES: We'll be --

13 THE COURT: -- over the lunch hour.

14 MR. JONES: Yeah, we'll be over there  
15 about 1:00. He's going to have to eat.

16 THE COURT: Okay. About 1:00. I need --  
17 the jail does need to give him -- his attorneys some  
18 time to talk to -- to their client.

19 MR. JONES: Yeah, if you could inform  
20 them that we'll be over there right around 1:00.

21 THE COURT: Okay.

22 MR. GARZA: So he'll have time to eat.

23 THE COURT: Yeah, we want him -- we want  
24 you to eat --

25 THE DEFENDANT: Yes, sir.

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1 THE COURT: -- Mr. Ramirez. And,  
2 obviously, I want to give you some time to think about  
3 this, okay?

4 THE DEFENDANT: All right.

5 THE COURT: But I do understand from what  
6 I -- from what I was told by your Defense Counsel,  
7 that you handed them a note, that it was your  
8 suggestion to do this.

9 THE DEFENDANT: Uh-huh.

10 THE COURT: Is that right.

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Okay. I guess sometime this  
13 morning you handed one of your lawyers a note that  
14 stated, "Can I still plead guilty?"

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And -- and that you wanted to  
17 talk to them about this.

18 THE DEFENDANT: Correct.

19 THE COURT: Okay. Well, I'm going to  
20 give you that chance.

21 THE DEFENDANT: All right.

22 THE COURT: Okay.

23 THE DEFENDANT: Thank you. Appreciate  
24 it.

25 THE COURT: Okay. Thank you.

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1 All right, well, we'll see you-all at, I  
2 guess, at 2:00?

3 MR. GARZA: Yes.

4 MR. SKURKA: Yes, Your Honor.

5 THE COURT: And, in the meantime, I  
6 suppose the State should -- should Mr. Ramirez take  
7 that option, I guess, the State --

8 MR. SKURKA: I'll have my witness on  
9 standby.

10 THE COURT: Have all your witnesses on  
11 standby, just in case he decides not to. It's  
12 certainly his right not to plead guilty if he chooses.

13 MR. SKURKA: Yes, Your Honor.

14 THE COURT: But, if he does choose to  
15 plead guilty I guess start working on the paperwork.

16 MR. SKURKA: Mr. -- Mr. Schimmel's going  
17 to assist me with that, Your Honor.

18 THE COURT: Okay. All right. Well,  
19 we'll see you-all after lunch. 2:00.  
20 (Noon recess.)  
21 (Out of the presence of the jury.)

22 THE COURT: Okay. All right. Be seated,  
23 please. Okay. We're back on the record. Now, I  
24 understand -- you-all can be seated. I understand  
25 we've got -- well, let me do this, I understand that

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1 the -- that, Mr. Ramirez, you -- you've decided --  
2 you've spoken with your lawyers.

3 THE DEFENDANT: Uh-huh.

4 THE COURT: I gave you time to do that.  
5 You did speak with them; is that right.

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Okay. And I guess between  
8 your counsel with them you've decided to continue on  
9 with the trial, and that's fine.

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Okay. All right. Then have  
12 a seat and we'll -- we'll move along.

13 Okay. To that end, I understand the  
14 State has some exhibits they want to introduce and  
15 you've shown them to the Defense.

16 MR. SKURKA: We have, Your Honor.

17 THE COURT: These are -- these are  
18 photographs that are going to -- I think pertain to  
19 Dr. Fernandez' testimony, your next witness.

20 MR. SKURKA: That's correct, Your Honor.

21 MR. GARZA: That's correct, Judge.

22 THE COURT: Okay. And do we have the  
23 numbers on these?

24 MR. SKURKA: We're just finishing tagging  
25 them.

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1 THE COURT: Okay. All right. Well, you  
2 tell me when you're done and we'll go --  
3 (Exhibits marked.)  
4 MR. SKURKA: Judge, I got a note from the  
5 witness office says, "Dr. Fernandez on his way in from  
6 Calallen. It may take a little bit to get here."  
7 THE COURT: Hum.  
8 MR. SKURKA: I called him right at 2:00,  
9 Judge, so he's only had, like, 10 minutes head start.  
10 THE COURT: Okay. Well, we'll have to  
11 deal with that. Okay.  
12 MR. SKURKA: But, actually, Calallen's  
13 not very far.  
14 THE COURT: Yeah, it's not very far once  
15 you get on the freeway. It's about 15 minutes.  
16 We still got to take care of this,  
17 anyway.  
18 (Pause in proceedings.)  
19 THE COURT: Okay.  
20 MR. SKURKA: Judge, for the record,  
21 Co-Counsel has marked State's Exhibit 179 -- I'm  
22 sorry, that's a 9, right -- 199 through 224 --  
23 THE COURT: Okay.  
24 MR. SKURKA: -- as photographs taken  
25 of the deceased Pablo Castro and/or his clothing.

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1 These exhibits I intend to introduce to the medical  
2 examiner, Ray Fernandez. I also have State's Exhibit  
3 225 and 226. For the record, those are diagrams also  
4 done by Dr. Fernandez showing the location of the  
5 wounds. I offer those into evidence at this time.  
6 THE COURT: All right.  
7 MR. GARZA: We reviewed those photos and  
8 we have no objection, Your Honor.  
9 THE COURT: Okay. So it's 2- what to  
10 226?  
11 MR. SKURKA: 199 through 226.  
12 THE COURT: Okay. All right, then,  
13 they're admitted.  
14 All right. So I guess we're just waiting  
15 for Dr. Fernandez. Let's go ahead and put her on and  
16 then we can get her out of here.  
17 MR. SKURKA: Pam Smith.  
18 THE COURT: Pam Smith. Let's put her on  
19 the stand.  
20 (Witness enters courtroom.)  
21 THE COURT: All right. You may take the  
22 stand.  
23 All right. Bring them in.  
24 (Jury enters courtroom.)  
25 THE COURT: All right. Be seated,

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1 please.  
2 All right, cross?  
3 MR. GARZA: Your Honor, we have no  
4 questions of this witness.  
5 THE COURT: All right. And --  
6 MR. SKURKA: No follow-up questions, Your  
7 Honor.  
8 THE COURT: -- any other questions? All  
9 right. You're free to go about your business. Please  
10 do not discuss your testimony with anyone while the  
11 trial is going on, save the lawyers. All right?  
12 THE WITNESS: Thank you.  
13 THE COURT: Thank you very much.  
14 (Witness exits courtroom.)  
15 THE COURT: Ladies and gentlemen, I will  
16 tell you that I have, outside of your presence,  
17 admitted some exhibits that will pertain to the next  
18 witness' testimony. Those exhibits are 199 through  
19 226.  
20 Mr. Skurka, the witness is not here, yet?  
21 MR. SKURKA: Judge, I'm ready to call Dr.  
22 Fernandez, but I got a note from the witness office  
23 said he's on his way in from Calallen. He should  
24 arrive here shortly.  
25 THE COURT: All right.

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1 MR. SKURKA: But he would be my next  
2 witness and final witness, I believe, Your Honor.  
3 THE COURT: All right.  
4 All right, then, Ladies and gentlemen, I  
5 expect he'll be here shortly. We'll -- we'll bring  
6 you right back out when he gets here.  
7 So all rise for the jury.  
8 (Jury exits courtroom.)  
9 THE COURT: I guess there's nothing else  
10 we need to take up at this time?  
11 MR. GARZA: No, Your Honor.  
12 THE COURT: Okay.  
13 MR. SKURKA: No, Your Honor.  
14 (Short recess.)  
15 (Jury enters courtroom.)  
16 THE COURT: Raise your right hand.  
17 (Oath administered.)  
18 THE WITNESS: I do.  
19 THE COURT: Be seated.  
20 Mr. Skurka, you -- you may proceed.  
21 MR. SKURKA: Thank you, Your Honor.  
22  
23  
24  
25

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1 REY FERNANDEZ, M.D., M.E.,  
 2 having been first duly sworn, testified as follows:  
 3 DIRECT EXAMINATION  
 4 BY MR. SKURKA:  
 5 Q. Please introduce yourself to the folks on the  
 6 jury and tell them your full name.  
 7 A. I'm Dr. Rey Fernandez.  
 8 Q. How are you currently employed?  
 9 A. I'm a medical doctor employed as medical  
 10 examiner for Nueces County.  
 11 Q. Can you tell the jury, basically, what the  
 12 duties of the medical examiner would be?  
 13 A. The medical examiner's required by State law  
 14 to investigate any violent deaths, or unexpected  
 15 deaths, to examine the body, complete a report and  
 16 determine the cause of death, the manner of death.  
 17 Q. And what kind of -- can you briefly explain  
 18 to the jury your educational background, what schools  
 19 you attended and degrees you may hold.  
 20 A. I graduated from Del Mar College and the  
 21 University of Texas in Austin. I completed medical  
 22 school in 1989 from the University of Texas, San  
 23 Antonio, Texas. 1990, I completed a hospital  
 24 internship in Philadelphia, Pennsylvania. It was six  
 25 months working with patients with medical problems,

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1 six months working with patients with surgical  
 2 problems. '90 to '94, I completed hospital pathology  
 3 residency, University of California, Irvine, where I  
 4 worked in a hospital lab. '94 to '95, I completed  
 5 medical examiner training at the medical examiner  
 6 office in Miami, Florida. '95 to 2002, I was employed  
 7 as a medical examiner in Miami, Florida. 2002, I was  
 8 employed as a medical examiner in Dallas, Texas. And  
 9 in 2003, I became employed as a medical examiner here  
 10 in Nueces County, in Corpus Christi.  
 11 Q. So you've been a medical examiner in Nueces  
 12 County since 2003.  
 13 A. That's right.  
 14 Q. But altogether you've been either an  
 15 assistant medical examiner in Florida, or whatever, or  
 16 Dallas. For how long altogether have you been a  
 17 medical examiner?  
 18 A. Since '94, I was a medical examiner.  
 19 Q. Can you tell the jury any special license you  
 20 may hold or certification you may hold.  
 21 A. I have a license, Texas medical license from  
 22 the Texas Medical Board, and then I have a Florida  
 23 medical license from the Florida Medical Board, and  
 24 then I have a certification in three areas, a  
 25 certification in anatomic pathology, certification in

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1 clinical pathology and a certification in forensic  
 2 pathology.  
 3 Q. Let's break that down. First of all, what's  
 4 that mean? How do you get certified in those areas?  
 5 A. Well, certification means you've completed  
 6 the training that's a recognized postgraduate training  
 7 in that area, and then you submitted the -- passed the  
 8 examination in that area, and then completed the  
 9 application fee for the -- for the certification.  
 10 Q. You said there's three areas that you're  
 11 certified in pathology, anatomical, clinical and  
 12 forensic?  
 13 A. That's right.  
 14 Q. What is pathology? Can you explain that to  
 15 the jury, please.  
 16 A. Pathology is a study of the changes in the  
 17 tissues in the body due to disease or injury.  
 18 Q. Do pathologists only -- are pathologists only  
 19 medical examiners?  
 20 A. No. They're --  
 21 Q. What do they do?  
 22 A. Most pathologists are hospital pathologists.  
 23 There's a lot them working in the hospital pathology  
 24 lab.  
 25 Q. What do they do?

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1 A. These are -- this type of work in the  
 2 hospital involves looking at specimens from the  
 3 operating room, deciding if the section that's been  
 4 removed during surgery is benign or a malignant tumor.  
 5 It involves doing the hospital laboratory testing in  
 6 the different section of the lab, for instance, the  
 7 blood bank, testing the blood for H.I.V., hepatitis,  
 8 for pathogens, doing other chemistry tests in the lab  
 9 for different enzymes, looking at the bone marrow,  
 10 different patients, to see if there's a different type  
 11 of cancer in the bone marrow or lymph nodes.  
 12 Q. How is that, Doctor, how is that kind of  
 13 pathologist different from what you do as a forensic  
 14 pathologist? Could you explain that term, "forensic  
 15 pathology," to the jury.  
 16 A. Forensic pathology has to do with the  
 17 application of laboratory methods for the  
 18 investigation of medical. That would mean doing  
 19 procedures in the lab like an autopsy procedure,  
 20 examining the body for injuries, reporting --  
 21 documenting those injuries and making a report, and  
 22 also collecting any evidence and doing any testing of  
 23 the body that might help determine the cause of death.  
 24 Q. Would it be fair to say, then, that -- that  
 25 hospital pathologists work with defining diseases or



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1 help people determine what the cause of disease or  
2 tumors are, where forensic pathology is more in tune  
3 with the legal system and courts?

4 A. That's true, except that about 90 percent of  
5 the cases that the medical examiner handles has  
6 nothing to do with the court system.

7 Q. Well, explain.

8 A. Well, a lot of the cases are -- most of the  
9 cases the medical examiner is involved in are natural  
10 deaths. Most of those are heart disease. And in  
11 about 30 percent of those end up having to do with  
12 other types of deaths, like accidental death or  
13 suicides, and a lot of those cases there's a report  
14 completed. And just like any case that comes in the  
15 office there's a report completed.

16 Q. So what you're saying is the medical examiner  
17 doesn't necessarily work on criminal cases or -- or  
18 cases involving homicide, do they?

19 A. That's correct.

20 Q. Tell them what the, I guess, the statutory  
21 requirements of the medical examiner in Texas to  
22 investigate what type of death, please.

23 A. Any deaths that are -- deaths that are  
24 reported to the medical examiner, the medical examiner  
25 will do what's called an inquest, where there's an

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1 investigation done. And that may involve information  
2 collected over the phone, it may involve collected  
3 medical records, it may involve also to the point of  
4 bringing the body to the office and having the body  
5 the examined and doing an examination of the body.  
6 And those are the cases where the person dies in the  
7 hospital within 24 hours of admission. All those  
8 cases are, by law, supposed to be reported to the  
9 medical examiner. Any case where the body is going to  
10 be -- the family or funeral home is talking about  
11 trying to get the body cremated, those bodies are also  
12 investigated by the medical examiner. Any violent  
13 deaths, unexpected deaths, those are also supposed --  
14 required by law to be reported to the medical examiner  
15 to investigate.

16 Q. So you don't end up testifying in court about  
17 the cause of death or manner of death in just criminal  
18 cases or homicide cases, you actually may issue  
19 reports in these other types of deaths.

20 A. That's correct.

21 Q. And, in order to do an investigation, do you  
22 always have to do an autopsy?

23 A. No. That's at the discretion of the doctor  
24 doing the investigating.

25 Q. What is an autopsy?

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1 A. An autopsy is a laboratory procedure involved  
2 looking at the outside of the body for any disease or  
3 injury on the outside of the body, and then making an  
4 -- an incision on the front of the body, what's called  
5 a "Y incision," to expose the chest cavity, the  
6 abdominal cavity, and then an incision is also made at  
7 the top of the head to expose the cranial cavity, to  
8 look inside the skull. So the doctor looks inside the  
9 skull, looks inside the chest cavity, abdominal  
10 cavity, examines all those organs in those cavities.  
11 Then those organs are removed, they're examined and  
12 they're weighed and they're looked at to determine if  
13 they have any injury or disease.

14 Q. So -- but not everybody you have to do an  
15 autopsy on, correct?

16 A. That's correct.

17 Q. How many autopsies have you done in your life  
18 or how many do you average a year as a medical  
19 examiner?

20 A. Up to now, I've probably done more than  
21 3,000. And we do probably about maybe at least 300 a  
22 year, here.

23 Q. When you do an autopsy are the purposes of  
24 that is to determine the cause of death and manner of  
25 death?

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1 A. Yes. That's part of the reason that the  
2 medical examiner is doing the investigation, to  
3 determine the cause of death and manner of death.

4 Q. And let's talk with those terms of art.  
5 First of all, what does "cause of death" mean?

6 A. The cause of death is that disease or injury  
7 that leads to the person dying.

8 Q. And "manner of death," what does that mean?

9 A. The manner of death tells us the cause of  
10 death comes about. If it's an injury that happened  
11 from a -- a fall or from a motor vehicle crash, it may  
12 be an accidental type of manner of death. If it's a  
13 injury that's caused by themselves, like a hanging or  
14 shooting themselves, it would be classified as  
15 suicide. If it --

16 Q. I'm sorry.

17 A. If they die from a natural cause, heart  
18 disease, cancer, medical illness, things like that  
19 would be natural for the manner of death. If it's  
20 death at the hands of another person, then those are  
21 classified as homicides.

22 Q. So you have about five different  
23 classifications?

24 A. Yes.

25 Q. Homicide, suicide, accidental, natural --



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1 A. And natural.

2 Q. Okay. So those are generally the four types

3 of manner of death.

4 A. Yes. There's another classification called

5 "undetermined," where after all the testing is done

6 the cause of death, the manner of death at that point

7 in time is undetermined.

8 Q. Do you work with law enforcement agencies or

9 review reports from law enforcement agencies or your

10 own investigators in -- before you start on your

11 autopsies, or your examination or issuing an autopsy

12 report?

13 A. Routinely, an investigator makes a report and

14 he gets his report from investigators to complete the

15 medical examiner investigator report, then I review

16 that report as part of doing the medical examiner

17 examination on the body.

18 Q. So you don't just rely on just the work that

19 you do inside the lab, you also depend on reports from

20 other agencies or your own investigator that helps you

21 determine -- help you make your determination,

22 correct?

23 A. That is correct.

24 Q. Let's talk about -- a little bit about -- you

25 mentioned your training and your certifications. Do

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1 you keep up with your training and doing some type of

2 continuing education that's required by the State for

3 your license?

4 A. Yes. In order to maintain the Texas medical

5 license, we're required to complete what's called

6 "Continuing medical education credits," which you get

7 through conferences or reviewing different journal

8 articles, and then taking tests or examinations having

9 to do with the contents of those articles or

10 conferences.

11 Q. So the learning doesn't stop just when you

12 get out of law school, huh?

13 A. Or medical school, either way.

14 Q. Medical school, I'm sorry. Did I say law

15 school? I'm sorry, medical school. Also, do you

16 attend conferences and keep up-to-date with published

17 journals in your field and -- or by your associations?

18 A. That's correct.

19 Q. Do you belong to any professional

20 organizations in your field and, if so, what are they?

21 A. Yes, I'm a member of the College of American

22 Pathologists, the American Society of Clinical

23 Pathologists, American Academy of Forensic Sciences,

24 and the National Association of Medical Examiners.

25 Q. Have you been qualified as an expert to

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1 testify in Nueces County or any other county as an

2 expert as a medical examiner?

3 A. Yes, I have.

4 Q. How many times?

5 A. Probably at least a hundred.

6 Q. Doctor, I now want to turn your attention to

7 a postmortem examination or autopsy of the person

8 identified as Pablo Castro, and Medical Examiner's

9 Report No. 04-908. Are you one who did the autopsy on

10 the victim in this case, Pablo Castro?

11 A. That's correct.

12 Q. And were you able to determine his age during

13 your investigation?

14 A. The age we had noted was 46.

15 Q. Is that correct on the autopsy report?

16 A. That's correct.

17 Q. Okay. So, when you did your examination

18 what's the first thing you do when you start the

19 examination of the victim in this case, Pablo Castro?

20 A. There's an examination made of the outside of

21 the body, it's called an "external examination,"

22 noting the person's height, the weight.

23 Q. Okay. And was everything pretty much routine

24 about the person's -- I'm sorry, let me rephrase that.

25 Before you also do the examination, do you notice any

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1 clothing on the body?

2 A. Yes, there's an inventory made of the

3 clothing on the body.

4 Q. Did this victim have his clothes on when he

5 was brought to you?

6 A. That is correct.

7 Q. I want to talk to you specifically about the

8 upper clothing, the shirt of this victim. Did you

9 examine that victim shirt while he was -- before your

10 autopsy began?

11 A. Yes.

12 Q. There's an exhibit in front of you marked

13 State's Exhibit No. -- what is that? Let me show you

14 a couple of photographs. This is marked, for purposes

15 of the record, as State's Exhibit No. 105. Do you

16 recognize that?

17 A. Yes, sir.

18 Q. What is it?

19 A. This is a shirt that we removed from the

20 decedent.

21 Q. I'll show you what's been already admitted

22 into evidence as 199 and 200. Do you recognize those?

23 A. Yes, sir.

24 Q. What are they?

25 A. These are photographs of the same shirt

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1 showing the -- the cuts on the shirt.

2 Q. Were these photographs taken at or near the

3 time of the autopsy?

4 A. Yes, sir.

5 MR. SKURKA: May I publish them to the

6 jury, Your Honor?

7 THE COURT: You may.

8 Q. (BY MR. SKURKA) Before we get to the

9 examination of the body, I want to start with the

10 photographs, and we'll look at 199. Turn the lights

11 off, please. There should be a laser pointer there in

12 front of you, somewhere there. There it is. Can you

13 tell us what we're looking at in 199. There it is.

14 A. This is a photograph that shows the -- the

15 front surface of the -- of the shirt, shows the blood

16 staining at the top half, and at the left shoulder

17 area it has areas where the shirt is -- has defects,

18 or -- or cuts.

19 Q. Just for record, is that the front of the

20 shirt or the back of the shirt, that picture?

21 A. This is -- looks to be the front of the

22 shirt.

23 Q. Tell us about the defects you saw in the

24 shirt, as you examined it.

25 A. The defects were noted at the top left upper

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1 arm area, the left -- and the front top of the left

2 shoulder area.

3 Q. What do you mean when you say, "defects"?

4 A. Those are areas where the shirt, the

5 material's been separated or cut.

6 Q. Looking at State's Exhibit No. 200, is that

7 the same shirt, but just the back side of it?

8 A. Yes, sir.

9 Q. And does it show -- what would your

10 examination of the shirt reveal?

11 A. This is -- showed the -- the back part of the

12 shirt and the bloodstains at the back, and also showed

13 similar four-type defects at the left upper back.

14 Q. Based on your experience and training as a

15 medical examiner, do you have an opinion as to what

16 caused those defects in the shirt, both on the front

17 and the back?

18 A. The opinion I have is that the shirt was worn

19 at the time the cuts happened, and these cuts on the

20 shirt correspond to the -- to the sharp force injuries

21 or cuts on the surface of the body.

22 Q. Are those cuts or defects in the shirt

23 consistent with knife wounds?

24 A. Yes, sir.

25 Q. And are they consistent with the location of

143

1 the wounds you found on Pablo Castro?

2 A. Yes, sir.

3 Q. In other words, where we see the holes in the

4 shirt, when you did the autopsy there were wounds

5 underneath that, correct?

6 A. That is correct.

7 Q. And the shirt itself is there in front of us

8 and that does show the same things, too, does it not?

9 A. Yes.

10 Q. Okay. Now, let's take the shirt off and go

11 to the next thing that you did. Once you said you did

12 the -- the removal of the shirt, did you also look for

13 any other injuries?

14 A. Yes.

15 Q. And can you tell us your evidence of injury

16 that you saw when you first viewed the body?

17 A. The notation was that there was a total of 29

18 sharp force injuries. This included 10 that were

19 called "stab wounds," which means they were

20 penetrating-type wounds. Those are wounds where they

21 actually penetrated into the body, and then there was

22 19 incised wounds. Those are longer than they are

23 deep. They run parallel to the surface of the body.

24 Q. Can you tell us, you said, "sharp force

25 wounds." What does "sharp force wounds" means?

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1 Sharp force means they're done with an

2 object, sharp edged-type weapon that cuts the body.

3 It's not blunt force trauma. It's not from a blunt

4 force applied to the body, it's from a sharp force

5 applied to the body.

6 Q. Give us an example of a blunt force, as

7 opposed to a -- what was called a blunt force trauma,

8 as opposed to sharp force injury.

9 A. Well, a blunt force would be like wood or an

10 object striking the surface of the body that's blunt

11 shape, not sharp edged, and caused bruising or tearing

12 of the skin. Sharp force injuries are the ones where

13 the sharp edged-type weapon actually cutting the

14 surface of the body, cutting the skin, actually

15 penetrating into the body.

16 Q. You mentioned that 10 of these 29 wounds were

17 stab wounds. How far did some of those stab wounds

18 penetrate the body of Mr. Castro?

19 A. Some of them went about three-and-a-half

20 inches to four inches.

21 Q. We'll go into detail on which ones did what,

22 but some of the penetrating wounds you say went three

23 and a half to four inches in the person's body?

24 A. That's right.

25 Q. Are those consistent, those penetration or

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1 stab wounds, consistent with being stabbed with a  
2 knife that may be five and a half or six inches long?

3 A. Yes, it would be.

4 Q. Just for the record, you said it was  
5 consistent with knife stab wounds, correct?

6 A. That's right.

7 Q. Is a knife a deadly weapon in that it's  
8 capable of causing serious bodily injury or death in  
9 the manner and means of its use?

10 A. Yes, it is.

11 Q. Again, the difference between stab wounds and  
12 incise wounds, you mentioned incise wounds are longer  
13 than deeper. What do you mean by that?

14 A. That means a cut on an inside wound would be  
15 cutting along the surface of the body, or cutting  
16 through the skin itself, but not penetrating deeper  
17 below that. If you measure the stab wound, it may  
18 have three-and-a-half inches on its depth, go  
19 three-and-a-half inches deep into the body, but the  
20 surface on the outside of the body is was only an inch  
21 or an inch and a half.

22 Q. What is -- are any of these wounds, would you  
23 describe them as slashes or stab marks or both? How  
24 would you describe them?

25 A. The incise wounds where they're cutting

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1 parallel to the surface of the body, cut along the  
2 surface, those would be the type that you would call  
3 slash-type wounds.

4 Q. Okay. So, Mr. Castro had 29 wounds, 10 of  
5 them stabs or penetrating wounds and 19 slash wounds.

6 A. That's correct.

7 Q. Okay. I'm just trying to put it down in  
8 layperson's terms.

9 A. Yes.

10 Q. Okay. You said that you started your  
11 evidence -- I'm sorry, your examination. Do you start  
12 from head to toe, or how do you start it?

13 A. Yes. There's an examination started from the  
14 outside of the body and looking at the -- the surface  
15 of the body for the -- for the injuries on the surface  
16 of the body.

17 Q. I'm going to just go along with your report  
18 and ask, as the first part, what did you see first  
19 when you did your examination of Mr. Castro?

20 A. There was four stab wounds that were noted at  
21 the back of the body, at the left back.

22 Q. Okay. I'm sorry, I'm looking at the -- page  
23 2. I think you're already ahead of me. Where it  
24 says, "Evidence of Injury"?

25 A. Yes, sir.

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1 Q. Okay. I'm talking about the area -- did you  
2 have a part that looked around the face of Mr. Castro?  
3 I want to start with that area, first --

4 A. Oh, okay.

5 Q. -- the head and the face. Are you with me  
6 there?

7 A. Yes. Under "Evidence of Blunt Force Trauma."  
8 The section under blunt force trauma, there's a  
9 notation is that the right upper eyelid, there was a  
10 one-half inch round contusion or bruise in the right  
11 upper eyelid.

12 Q. Now, a minute ago you said these other 29 are  
13 sharp stab wounds or incise wounds, but now you said  
14 you did see some blunt force trauma.

15 A. Correct.

16 Q. What is that indicative of?

17 A. That's evidence of that part of the body that  
18 was impacted, the surface impacted against that part  
19 of the body, or that part of the body was impacted  
20 with some blunt surface.

21 Q. Could that be consistent with being hit with  
22 a hand or a fist or a punch?

23 A. Yes.

24 Q. Or a kick, maybe?

25 A. Yes.

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1 Q. Okay. So he had a bruise or contusion around  
2 his right upper eyelid; is that correct?

3 A. That's right.

4 Q. And what other contusions, if any, did he  
5 have as a result of blunt force trauma?

6 A. The right side of the neck had a similar  
7 one-half inch contusion or bruise.

8 Q. And the lower lip -- I'm sorry, where's the  
9 next -- did you find any other marks on the person's  
10 face?

11 A. The next section is a -- below there. It's a  
12 lower lip at the left side. There was a one-quarter  
13 inch laceration or tear.

14 Q. These photographs have already been admitted  
15 into evidence, and I want to ask you to look at them  
16 and see if you can show the jury what we're talking  
17 about with these bruises. I'm going to show you  
18 what's marked State's Exhibit No. 214. What does that  
19 show? And using the laser pointer, please.

20 A. The left eyelid -- on the right eyelid area,  
21 there was -- that's where a discoloration was or where  
22 the bruise was.

23 Q. That's the one you've previously described?

24 A. Yes, sir.

25 Q. And right now I'm just talking about those

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1 parts of the bruises. We'll get to the other wounds  
 2 in a minute. What about -- you said there was also a  
 3 bruise on the right side of the neck; is that correct?  
 4 A. Yes, sir.  
 5 Q. I'm going to show you what's marked 222 and  
 6 see if that shows that bruise.  
 7 A. Yes.  
 8 Q. Can you show the jury where we're looking at?  
 9 A. This is the right side of the neck here, and  
 10 at the center here is the bruise, the right side of  
 11 the neck.  
 12 Q. And you said there was also a laceration, a  
 13 small laceration of the lower lip at the left side; is  
 14 that correct?  
 15 A. Yes.  
 16 Q. Okay. Now let's move to the next part that  
 17 you examined wounds on, and I think you were going to  
 18 talk about the back. Can you tell us what, if  
 19 anything, you saw on the back of Mr. Castro in the  
 20 area of wounds.  
 21 A. The surface of the back, that's where the  
 22 four stab wounds were noted.  
 23 Q. Where exactly -- can you tell us or describe  
 24 the type of injuries? Were those penetrating wounds  
 25 or incise wounds?

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1 A. These were penetrating, they were stab  
 2 wounds. They went deep into the underlying muscle and  
 3 the tissue in that underlying area.  
 4 Q. I'm going to show you what's been introduced  
 5 as State's Exhibit No. 209. Is that a 4 or a 9? 209.  
 6 What does that photograph depict?  
 7 A. This is a photograph that shows the back  
 8 surface of the body, shows the left back, and it shows  
 9 the -- the four stab wounds that were noted at the  
 10 left back here, here, here, and at this location.  
 11 Q. Would you start at the top right and then go  
 12 to the left and go down and describe in detail those  
 13 wounds that Mr. Castro suffered as a result of stab  
 14 wounds in his back.  
 15 A. This was a wound at the back that had a  
 16 pointed -- when you looked at it, you could see a  
 17 pointed margin at the top here, and at this area it  
 18 was flattened. So it would be like triangular shape,  
 19 with the base down here and a pointed margin at that  
 20 top area.  
 21 Q. What does that indicate to you, if anything?  
 22 A. That would be an indication to me of a sharp  
 23 edged weapon that penetrated into that part of the  
 24 body with one of the edges being sharp.  
 25 Q. Is that consistent with a knife wound?

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1 A. Yes, sir.  
 2 Q. What damage, if anything, did that wound  
 3 cause and how far did it penetrate?  
 4 A. That wound at the -- at the back --  
 5 Q. And just for the record, we're talking about  
 6 looking at the back in the upper right.  
 7 A. That one went about four-and-a-half inches  
 8 down into the soft tissue in the muscle, in that area.  
 9 Q. It penetrated four-and-a half inches into  
 10 Pablo Castro's body?  
 11 A. Yes.  
 12 Q. Did it hit anything, I know what they call  
 13 them, "vital organs"?  
 14 A. That one did not get into the lung in that  
 15 area. It went into the soft tissue of the muscle and  
 16 went downward.  
 17 Q. Is that a fatal wound?  
 18 A. That by itself contributed to the death, but  
 19 it's not considered itself a fatal-type wound.  
 20 Q. Let's get that cleared up with the jury.  
 21 What does "a fatal wound" mean?  
 22 A. A fatal wound would be one that cuts through  
 23 some -- a major blood vessels or goes into some of the  
 24 vital organs in the body.  
 25 Q. So when you say it was a contributing wound,

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1 what did you mean?  
 2 A. That means there is some blood loss from that  
 3 wound, but it's not hitting a major artery, or a major  
 4 vein or organs.  
 5 Q. So although that wasn't a fatal wound, it was  
 6 a contributing cause of Pablo Castro's death?  
 7 A. Yes, sir.  
 8 Q. Let's go to the -- that -- the left of that  
 9 wound, and I'm talking about the top wound of the  
 10 three there on the left side of the picture we're  
 11 looking at.  
 12 A. This wound at the left was a wound that was  
 13 going into the -- the back. And it did go four  
 14 inches, but it took more of a path into the -- into  
 15 the cavity. And it actually went into the -- the  
 16 left -- the left lung.  
 17 Q. So that wound that you've shown on the left  
 18 of the one on the top, three wounds, the one on the  
 19 top, it penetrated four inches into Mr. Castro?  
 20 A. That's correct.  
 21 Q. And what damage, if any, did it cause?  
 22 A. That one actually cut the underlying organ  
 23 that's the left lung.  
 24 Q. What damage does it cause when your lung is  
 25 cut by a knife?



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1 There is a couple of changes that happen.  
 2 One of them is blood loss going into that -- to that  
 3 part of the body. The -- also that left lung is  
 4 collapsing. Normally, it's supposed to be able to  
 5 expand and collapse, but when you injure it that way,  
 6 it collapses. So there's difficulty with breathing,  
 7 because the lung is injured and it also has difficulty  
 8 with breathing because the blood is starting to fill  
 9 into that side of the chest.

10 Q. And what would that cause?

11 A. That's a fatal-type injury.

12 Q. So it's your -- your testimony that that is a  
 13 fatal wound?

14 A. Yes, sir.

15 Q. The next wound underneath it, in the middle  
 16 of those three in a row, can you describe that wound,  
 17 the depth of that wound and what, if any, injury it  
 18 caused --

19 A. This --

20 Q. -- the damage it caused.

21 A. This wound at this location also has the  
 22 pointed margin at the top and the slanted margin at  
 23 the bottom, and it went -- it went into the body and  
 24 it went downward, downward into the soft tissue of the  
 25 muscle about four inches.

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1 Q. Again, did that cause any -- or hit any vital  
 2 organs?

3 A. No. That did not go into the lung itself.  
 4 It went into the soft tissue of the muscle.

5 Q. Would that be also a contributing wound, if  
 6 it wasn't a fatal wound?

7 A. That is correct.

8 Q. The final one on his back of the four wounds  
 9 Mr. Castro received on the back, the one at the  
 10 bottom, can you tell us -- describe that wound, how  
 11 far it went in and what damage, if any, it caused.

12 A. This one, at this location, also had the  
 13 flatten marks at the bottom and pointed mark at the  
 14 top and went into the soft tissue of the muscle, and  
 15 it went about four inches in depth, also. It didn't  
 16 go into the lung and didn't go into the chest cavity.

17 Q. So, again, it went into the soft issue or the  
 18 muscle area?

19 A. That's correct.

20 Q. But it went in four inches, correct?

21 A. Yes, sir.

22 Q. Did that -- was that a fatal wound to Mr.  
 23 Castro?

24 A. No. That's not a fatal wound by itself, but  
 25 it's the wound that contributed to the death.

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1 Q. So of those -- in summation, before we move  
 2 on to the next area, of those four wounds, there was  
 3 only one of those which is the fatal wound, which is  
 4 the one you indicated on the top left?

5 A. This location here.

6 Q. Okay. And the other ones were contributing  
 7 factors?

8 A. Yes, sir.

9 Q. Now, based on the results of those stab  
 10 wounds in the back, would that result in any type of  
 11 amount of blood being found in the chest cavity or the  
 12 body cavity?

13 A. Yes.

14 Q. Can you explain to the jury how much blood  
 15 was found and where it was found?

16 A. The left side of the chest had about 200 cc's  
 17 of blood. Normally, there's no blood in that -- in  
 18 that -- in that chest cavity, so this has about 200  
 19 cc's of blood in that chest cavity.

20 Q. So in that -- would that be the left lung or  
 21 chest cavity, is were the left lung is?

22 A. Inside the left chest cavity is where the  
 23 left lung is.

24 Q. Okay. So in that cavity there would usually  
 25 be no blood at all.

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1 A. That's correct.

2 Q. And there was 200 cc's -- and, I'm sorry, we  
 3 don't know the metric system very well, so can you  
 4 tell us approximately how much 200 cc's of blood would  
 5 be?

6 A. If you had a soda can, that would be about  
 7 350 cc's, so this would be about half or -- somewhere  
 8 close to half of a soda can.

9 Q. And was that blood -- based on your medical  
 10 experience and training, was that blood the result of  
 11 that wound to the left lung?

12 A. Yes, sir.

13 Q. Let's move on to the next part of your  
 14 report, unless there's anything else -- I'm sorry,  
 15 I've got a couple of more photographs to show you,  
 16 208.

17 MR. SKURKA: Show them that, briefly,  
 18 please.

19 Q. (BY MR. SKURKA) Does that show the same  
 20 wounds or just all three of them a little closer up?

21 A. Yes.

22 Q. And 207, does that show the other wound on  
 23 the back, just in closer detail?

24 A. Yes, sir.

25 Q. Can you show us -- you were talking about the



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1 edge of the wound, or something, to show them the  
2 shape that you can tell it's a knife wound. Maybe --  
3 there you go. Might be a little closer on that.

4 A. As you get to the edge over here, you've got  
5 -- you see where it's kind of pointed, and you see  
6 another side here where it's more flattened, so it has  
7 a large triangular shape, and that's the typical shape  
8 for a stab wound.

9 Q. Okay. So that -- all those wounds in the  
10 back are consistent with knife stab wounds.

11 A. Yes, sir.

12 Q. Okay. Let's move on to the next area, if we  
13 could, please. In your report -- and I believe that's  
14 in I guess the front or the upper torso? You tell me  
15 what we're looking at.

16 A. It's the right -- right collar bone area.

17 It's the second paragraph on page 3.

18 Q. Okay. That's the right shoulder or the left  
19 shoulder?

20 A. That would be the right one.

21 Q. Okay. What did you find when you examined  
22 the right shoulder?

23 A. Over the right -- right clavicular, the right  
24 collar bone area, there was a stab wound. It had a  
25 pointed margin at the top and a flat margin at the

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1 bottom. That stab wound was about half an inch --  
2 inch and a half on its outside surface. It went  
3 two-and-a-half inches deep into the soft tissue and  
4 into the muscle.

5 Q. I have a photograph marked State's Exhibit  
6 No. 221. Does that show that wound?

7 A. Yes, sir.

8 Q. And, for the jury, can you use the laser  
9 pointer and show which one we're talking about?

10 A. At this location here.

11 MR. SKURKA: If could you go in closer on  
12 that, Mr. Schimmel, please. All the way in.

13 Q. (BY MR. SKURKA) You said that wound was  
14 one-and-a-half inches long?

15 A. On the outside surface.

16 Q. We'll get it focused here in a second. Okay.  
17 So that was one-and-a-half inches long and it  
18 penetrated how deep?

19 A. It went about two-and-a-half inches deep.

20 Q. But did this hit any fatal -- I'm sorry, any  
21 vital organs or anything?

22 A. No.

23 Q. So was that not -- that was not a fatal  
24 wound, it was a contributory wound?

25 A. That's correct.

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1 Q. What is the next wound that you saw on Mr.  
2 Castro?

3 A. It's noted the third paragraph, the left  
4 collar bone area, it was another stab wound that had  
5 the flat margin at the bottom and the pointed margin  
6 at the top. It was an inch and a half and it went  
7 about three-and-a-half inches --

8 Q. Is that --

9 A. -- deep into the body.

10 Q. I'm sorry. Is that wound shown on that  
11 photograph?

12 A. It's going to be -- you might have a  
13 photograph that shows --

14 Q. It's more in the left shoulder?

15 A. It's starting to come out here.

16 Q. Okay. State's Exhibit No. 220, maybe that's  
17 -- you want the left side of the neck, is what you're  
18 saying, correct?

19 A. Yes. All this area in here.

20 Q. Okay. Is that a better photograph of it?

21 A. Yes, sir.

22 Q. Okay. Show us which one we're talking about  
23 and I'll have him close in on it a little bit.

24 A. The right -- the left collar bone area had  
25 the wound. It -- you're starting to see some of it,

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1 here but it's kind of out of focus.

2 Q. I'm sorry, I didn't hear what you said.

3 A. I think you're getting out of focus in here.

4 Q. Okay. Let me see if I can get a better  
5 photograph of that. Let's show you 217. Does that  
6 show the wound?

7 A. Can you lift it up a little?

8 Q. Yes.

9 A. Yeah, they're getting better; there. Yes,  
10 sir.

11 Q. Thank you. Show us that wound and describe  
12 the damage it did, please.

13 A. There's one that's one and a half inch here,  
14 and then the other one that's closest, it's two inches  
15 here.

16 Q. What damage, if any, did that cause?

17 A. This was a wound that went into the soft  
18 tissue. It didn't go into any of the vessels or any  
19 of the organs.

20 Q. So was that a fatal wound to Mr. Castro?

21 A. No.

22 Q. What's the next -- what other wounds did you  
23 notice at or around the neck area?

24 A. The one next to it here at this location was  
25 a two-inch stab wound.

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1 Q. I'm sorry, let me turn that --  
 2 THE COURT: Maybe if you back that up,  
 3 Doctor, just a little bit.  
 4 (Witness complying.)  
 5 THE COURT: There we go.  
 6 Q. (BY MR. SKURKA) I tell you what, Doctor,  
 7 let's switch photographs and show you 219. Maybe  
 8 that's a better shot to get a better perspective of  
 9 the other wounds. Let's go back to this one. I don't  
 10 think we've talked about that one yet. Can you show  
 11 us the area of damage or what it did.  
 12 A. The one here, that's another -- that's a stab  
 13 wound at the front of the left shoulder, and that's a  
 14 one-and-a-half inch stab wound. That wound went into  
 15 the underlying soft tissue of the muscle. It went  
 16 about three-and-a-half inches deep.  
 17 Q. Three-and-a-half inches deep?  
 18 A. Yes.  
 19 Q. Was that a fatal wound there?  
 20 A. Well, that went into the soft tissue and the  
 21 muscle, didn't hit the -- the vital organs or the  
 22 major artery.  
 23 Q. What about the -- this wound over here?  
 24 A. The wound you pointed here at this part of  
 25 the upper arm, that was at the outer surface of the

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1 left upper arm. That one went in about  
 2 three-and-a-half inches into the muscle, the soft  
 3 tissue of the muscle in the left upper arm.  
 4 Q. Was that a fatal wound?  
 5 A. That's another wound that is not fatal. It  
 6 didn't hit the organs.  
 7 Q. And that was three-and-a-half inches deep?  
 8 A. Yes, sir.  
 9 Q. Let's go back to the area at the base of the  
 10 neck, and I'm going to let you describe for the jury  
 11 what we're seeing and what these wounds were and what  
 12 damage they caused, and I'm looking at 217. Can you  
 13 describe the wounds found on Mr. Castro on or around  
 14 his neck area.  
 15 A. At the left side of the neck, at the lower  
 16 left side of the neck here, there's one stab wound  
 17 this location that's a triangular shape. It's a  
 18 one-inch stab wound, and it went three-and-a-half  
 19 inches deep into the tissue. That stab wound is one  
 20 that cut one of the vessels in the neck that are  
 21 called the jugular -- "external jugular vein," and  
 22 that's a major vein at that part of the neck. That --  
 23 that caused severe bleeding or blood loss in that  
 24 part.  
 25 Q. Is this wound that you pointed down here, is

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1 that -- was that a fatal wound by cutting the external  
 2 jugular vein?  
 3 A. Yes, sir.  
 4 Q. Why?  
 5 A. That's a major vessel and it caused blood  
 6 loss from that part of the body.  
 7 Q. What, if any other wounds can you describe  
 8 for the jury that we're seeing in that photograph  
 9 around the neck area?  
 10 A. The other wound that's noted right here at  
 11 this -- this left side of the neck is a three-inch  
 12 wound measured in this location, is three inches, and  
 13 then it's deep, three inches deep.  
 14 Q. Three inches long and three inches deep?  
 15 A. Yes, sir.  
 16 Q. What, if anything -- damage did that cause?  
 17 A. There's a muscle that runs underneath here  
 18 that controls the turning of the head from one side,  
 19 turning it to the other side. That muscle was  
 20 transected. It was cut. Underneath that muscle is  
 21 the carotid artery, it's a major artery in the left  
 22 side of the neck. That artery was cut in two. The --  
 23 next to that artery is a vein called "the internal  
 24 jugular vein." That vein was cut in two. So that's  
 25 injury causing severe blood loss from that -- from

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1 those -- that artery in the vein. The vein is  
 2 draining the blood from the head, from the brain out  
 3 back -- back toward the heart, and the artery is  
 4 carrying the blood up to that -- to that part of the  
 5 body.  
 6 Q. So the carotid artery that was transected or  
 7 cut in half, as you said, is one that would supply  
 8 blood to, like, the brain?  
 9 A. It's carrying blood to the face, to the head  
 10 -- to the brain, to the head, those structures.  
 11 Q. All that area in the head.  
 12 A. Yes, sir.  
 13 Q. Is the internal jugular vein, is that a major  
 14 vessel, also?  
 15 A. Yes, sir.  
 16 Q. So the combination -- what happens when you  
 17 get both of those cut, the carotid artery and the  
 18 internal jugular vein?  
 19 A. The vein is draining blood from that part of  
 20 the body, so that's going to be oozing blood out from  
 21 the vein. The -- the artery is -- is carrying the  
 22 blood from the heart to the brain and into the head.  
 23 Every time the heart pumps a burst of blood is going  
 24 through that artery that's going shooting up toward --  
 25 toward the head and the brain. So every time the

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1 heart pumps, you're going to have a burst of blood  
 2 being pumped out that artery.  
 3 Q. Is that a fatal -- both of those fatal  
 4 wounds?  
 5 A. Yes, sir.  
 6 Q. How long would -- could a person survive with  
 7 that cut, the damage you've seen inflicted?  
 8 A. It's not an instant death. It's not at that  
 9 instance the person dies. It's going to be a rapid  
 10 death, very quick. They're going to -- they're going  
 11 to collapse, go into shock, probably, within a few  
 12 minutes, within five minutes, and then within another  
 13 10 minutes or 15 minutes they're going to be -- their  
 14 heart's going to shut down, their organs are going to  
 15 shut down and they're going to die.  
 16 Q. Now, that's not the only fatal wound. Is  
 17 that also what's going on in the back? You said that  
 18 one of the back wounds is a lung. That, in connection  
 19 with this one, what is it doing?  
 20 A. You have a combination of different fatal  
 21 wounds acting to cause the person to die.  
 22 Q. I'm going to show you what's marked State's  
 23 Exhibit 221, and I want to ask you about these other  
 24 wounds and, I guess, the chin and underneath the chin?  
 25 What, if any damage did that cause and could you

166

1 describe those for the jury?  
 2 A. Yes, there was -- at the lower chin area,  
 3 there's an incise, in other words, just cutting along  
 4 the surface of the -- the skin. It's not cutting into  
 5 the -- a major vessel or any organs. It was just  
 6 cutting along the surface there. There's -- at the  
 7 right chin there's another incise wound that's going  
 8 -- cutting parallel to the surface, slashing along the  
 9 surface. It's not cutting -- it's not a stab wound.  
 10 It's not penetrating into the body. It's not hitting  
 11 any of the organs or vessels into the area.  
 12 Q. So that would have been one of the  
 13 slashing-type wounds?  
 14 A. Those would be slashing-type wound.  
 15 Q. What other wounds, if any, can you describe  
 16 for the jury that you noted around the neck area?  
 17 A. On the lower neck there was another slashing  
 18 wound or incise wound going across the surface at the  
 19 front.  
 20 Q. Are those other wounds fatal wounds, those  
 21 slashing-type wounds around the chin?  
 22 A. No. These are not fatal type.  
 23 Q. Are those consistent with stab wounds or stab  
 24 slash -- or knife slashing?  
 25 A. They're consistent with knife slashing.

167

1 Q. Now that we've talked, is there any other  
 2 wounds on the neck that you haven't described to the  
 3 jury yet that I've missed?  
 4 A. No, sir.  
 5 Q. I'm going to show you what's been marked as  
 6 State's Exhibit 220. And you pretty much described --  
 7 you pretty much described the wounds along Mr.  
 8 Castro's neck and upper shoulder and back. I want to  
 9 know about the rest of his body, his torso, abdomen,  
 10 legs. Did he have any wounds there?  
 11 A. This was no injuries noted at the -- at the  
 12 legs or the thighs or the rest of the left -- the rest  
 13 of the -- the left arm or left hand. There was no  
 14 injuries noted to those parts of the body.  
 15 Q. So as far as his abdomen is concerned or this  
 16 area here and down here, there was no other stab  
 17 wounds, they were all concentrated around the head,  
 18 neck and shoulder.  
 19 A. That's right.  
 20 Q. And the back, I'm sorry.  
 21 A. And the back.  
 22 Q. Okay. Now, let's go to the next part of the  
 23 body I want to talk to you about is the head. And  
 24 I've got a series of photographs that will show the  
 25 areas of the head. And I want to start with State's

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1 Exhibit No. 223.  
 2 MR. SKURKA: And would you go in a little  
 3 closer on that, Mr. Schimmel.  
 4 Frank, do you mind turning this light off  
 5 a little bit? I think that's making a glare.  
 6 THE COURT: I don't think that one goes  
 7 off completely.  
 8 MR. SKURKA: Well, that's a little  
 9 better.  
 10 THE COURT: That's about as good as  
 11 you're going to get.  
 12 MR. SKURKA: Okay.  
 13 Q. (BY MR. SKURKA) What, if any injuries did you  
 14 see on Mr. Castro's face and head?  
 15 A. The nose, the surface of the nose had areas  
 16 where there was small cuts or what we call "incise  
 17 wounds" or "slash wounds" on the surface of the nose.  
 18 The upper part of the nose, up in this location, going  
 19 up toward the -- the upper eyelid on the right was a  
 20 slash or incise wound that went along this surface.  
 21 Q. Are any of these on his face penetrating  
 22 wounds or are they slash wounds?  
 23 A. These are slash-type wounds.  
 24 Q. I have another close-up of the area around  
 25 the nose. It's marked State's Exhibit 213. Does that

169

1 show any of the wounds to Mr. Castro?

2 A. Yes, it shows the line I described at the top

3 upper part of the nose and then on the front lower

4 part of the nose at the left side of the nose.

5 Q. Is this what you're talking about a slash

6 wound that would be into the eye and goes down to the

7 edge of the nose?

8 A. This one here would be a slash, these two

9 would be a slash, this one would be a slash.

10 Q. Okay. Let's go back off of that one and go

11 to the sides of the head, and I'm going to show you

12 what's marked State's Exhibit 216. What does that

13 depict, please?

14 A. In front of the left ear there was another

15 slash wound or incise wound that was at this location.

16 Q. So, for the record, you're showing right on

17 the -- right in the -- to the left of the left ear,

18 correct?

19 A. Just in front of the -- of the left ear and

20 also this photograph shows about the same level as

21 this one at the earlobe.

22 Q. What about this one down here, is that the

23 one that you described earlier on the neck or is that

24 just one under the ear?

25 A. This photograph shows some of the same ones

170

1 we described before, but the -- the skin is -- is

2 being pushed back. But there is some -- there is an

3 incise wound behind the ear and -- and in this area

4 here and in this area here.

5 Q. Okay. What about this area here in the

6 hairline here and up here, did you notice any other

7 kind of wound or marks -- and I think I may have --

8 well, how about over here, what is this?

9 A. There's some blood staining in this area, and

10 then, there's some -- also this -- it looks like it's

11 got darker area where there's some -- some superficial

12 cutting, also.

13 Q. I have another close-up marked 215. What

14 does that depict?

15 A. This is a photograph that shows the -- the

16 left side of the head at the left ear. It shows some

17 blood on the surface of the ear. It shows the slash

18 wound into the skin in front of the left ear and also

19 some more on the slash area here on the earlobe.

20 Q. What about these spots that are up here in

21 the hair above the left ear, what are they?

22 A. Some of these -- these are at the -- there's

23 no cuts that were noted in that part, but it looks

24 like it's got the same dark staining that's probably

25 from the blood area.

171

1 Q. Is that consistent -- you mentioned all these

2 wounds around the neck, the back, the side of the

3 face, the face, is that consistent with a person

4 turning or twisting as they're being stabbed?

5 A. Yes. It could be consistent with the person

6 getting those injuries at the time they're moving and

7 those injuries are happening.

8 Q. Okay. Would it have been in your experience

9 and your training that people stand still when they're

10 getting stabbed?

11 A. Most of the time, no.

12 Q. What do you mean?

13 A. Most of the time if they're awake, they're

14 alert, they're getting injured, they're moving around

15 trying to get away from the attack.

16 Q. Are these wounds in the whole body of Pablo

17 Castro consistent with that scenario?

18 A. Yes, sir.

19 Q. Now that we've finished with the head area, I

20 want to go into a little more detail with the ones

21 around the left shoulder. And I've got two

22 photographs marked 218 and 212 to show you. And we'll

23 start with that one. What does that depict?

24 A. This shows the stab wound at the top of the

25 left shoulder, the inch and a half stab wound, and

172

1 this shows the stab wound at the outside part of the

2 left upper arm or the outer left shoulder area.

3 Q. Are they always that wide like that?

4 A. They -- depending on how the body's resting,

5 they can close up. If you turn the body a certain way

6 or the way that the body is put a certain way it

7 causes them to open up more.

8 Q. And finally -- I'm sorry, 218. Is that a

9 close-up of the one on the outside of the left arm?

10 A. Yes, sir.

11 Q. Let me take that off. I want to switch

12 gears. You've talked about a lot of the wounds that

13 you've seen and on the torso, meaning the abdomen, the

14 front, the back, the neck, the head. I want to talk

15 to you, now, about something that's called defense

16 wounds. Can you explain to the jury what I mean when

17 I say defense wounds?

18 A. Defense wounds would be the type you'd expect

19 to see on the hands or the back of the arms, that

20 someone is trying to defend themselves when they're

21 being attacked.

22 Q. Can you demonstrate or show on your own body

23 how those -- where those usually are?

24 A. If someone is coming at the person with a

25 sharp-edged knife and they're being attacked, the



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1 person may block it with their hand or they may end up  
2 having their hand come in contact with it and get cut  
3 in the back, or their forearm get cut in the back.

4 Q. What does that indicate to you when you see  
5 the presence of defense wounds on a victim?

6 A. Well, that would indicate the person -- the  
7 victim's alive and they're conscious during the  
8 attack, and they're trying to defend themselves from  
9 the attack.

10 Q. Did you find examples of defense wounds on  
11 the victim in this case, Pablo Castro?

12 A. Yes, sir.

13 Q. Where?

14 A. The back of the right forearm, or on this  
15 area, there was a half-inch slash at the back of that  
16 right forearm.

17 Q. I believe I have a photograph of it marked  
18 State's Exhibit 206. Is that visible on that  
19 photograph?

20 A. This is a photograph that has some stain on  
21 it, but it's starting to show up in this area.

22 Q. Okay. I think I have the other one, 205.

23 A. Yes, sir.

24 Q. Now, using your own arm, can you corres -- or  
25 show us where that corresponds to.

174

1 A. That would correspond to the part on the --  
2 on the arm, on the forearm, at the top of the forearm.

3 Q. And would you classify that as a defense  
4 wound on Pablo Castro's right forearm?

5 A. Yes.

6 Q. You also mentioned there may be defense  
7 wounds on the hands as if to fend off an attack. Did  
8 you find any evidence of defense wounds on Mr.  
9 Castro's hands?

10 A. Yes.

11 Q. Where?

12 A. The back area of the right hand, in the palm  
13 surface, there was a quarter-inch cut, incise wound in  
14 that area. The back of the left small finger of the  
15 -- the right small finger, there was another one-half  
16 inch cut. The back of the right middle finger had two  
17 quarter-inch cuts. The palm surface -- actually on  
18 the palm surface, on the right hand, on the same hand,  
19 had another cut at the bottom of the fingers that was  
20 an inch and a half. And the palm surface on the right  
21 ring finger also had a cut going along the surface.  
22 And the thumb on the right palm had a half-inch cut.

23 Q. I've lost count of how many defense wounds,  
24 but how many defense wounds would that be altogether,  
25 including the forearm and the hand?

175

1 A. That's a total of eight.

2 Q. Now, are those included in your total of the  
3 29 wounds?

4 A. Yes.

5 Q. Okay. So eight of those wounds are ones that  
6 he received by trying to defend himself?

7 A. Yes.

8 Q. I've got some photographs. I know you used  
9 your own hand to describe to the jury where these are  
10 and what they look like, but let's show photographs to  
11 the jury. 204, what is that a photograph of?

12 A. This is a photograph of the -- the back of  
13 the right hand, showing some of the cuts at the back  
14 of the -- of the middle finger, and then had cuts at  
15 the -- at the back of the ring finger. You can start  
16 to see some of the cuts here at the edge on the -- of  
17 the palm, but it's got a -- it's a dark area on the  
18 photo.

19 Q. What about the area right here in the middle  
20 between I guess your middle and ring finger?

21 A. There's some bloodstain here. This is --  
22 this is the cut here on the -- on the middle finger.

23 Q. Okay. So this isn't a cut, this is just a  
24 stain?

25 A. Yes, sir.

176

1 Q. The cuts are actually down here, around here  
2 and here?

3 A. Yes, and in this location, but it's dark in  
4 the photograph.

5 Q. You just can't see it, 'cause it's dark in  
6 the photograph? Are the hands showing any evidence of  
7 bruising or just the cuts and the bloodstains?

8 A. There's some bleeding in the tissue around  
9 it.

10 Q. What does that indicate to you?

11 A. You get some bleeding around it from the --  
12 from the knife itself bruising the tissue.

13 Q. By the penetration of the knife, that causes  
14 the tissue to bruise or bleed around it?

15 A. By compressing the tissue and breaking some  
16 of the small vessels.

17 Q. I've got another photograph that's a close-up  
18 of the outside of the finger, I believe, 224? What  
19 does that show?

20 A. This is a photograph that shows the -- the  
21 finger, the back of the finger, and the cuts along the  
22 back of the finger.

23 Q. Could you tell us what finger that is.

24 A. It looks like the ring or the small finger on  
25 the right hand.



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1 Q. The pinky finger?

2 A. Yes. Pinky.

3 Q. I'm sorry, I -- I'm real technical medical,

4 aren't I, the pinky finger.

5 A. Yes, sir.

6 Q. Okay. So that's the back of the pinky

7 finger. Does that -- that shows a defense wound, too,

8 that you've described to the jury?

9 A. Yes, sir.

10 Q. Okay. That's the outside of the back of the

11 hands. I have three more photographs to show you of

12 the palm itself, or the inside of the hand. And let's

13 just start with State's Exhibit 202. Using your laser

14 pointer, was that the left or right hand of Mr.

15 Castro?

16 A. All these injuries that we've noted -- have

17 been noted on the right hand. This is a photograph

18 that shows the right hand, and it shows the cut on

19 the -- the center part here, on the -- on the thumb,

20 on the right thumb; then along here at the base, where

21 the -- where the middle finger and the ring finger are

22 attached at the front of the palm, there's another

23 slash right there. And then the -- the ring finger

24 itself, there's another cut around the surface here.

25 Q. So you can -- you've located on the palm

178

1 itself, or the inside of the hand, cuts on the thumb,

2 the bottom of the fingers and then this finger,

3 itself.

4 A. Yes, sir.

5 Q. I think I've got another close-up of that,

6 203. Does that show those kind of injuries maybe a

7 little more close-up?

8 A. Yes. It shows the cut on the -- on the

9 thumb, the cut on the -- the base here, the -- of the

10 -- the palm and the base of the fingers.

11 Q. And State's Exhibit No. 201, what does that

12 show?

13 A. It is a photograph, a close photograph,

14 showing the cuts at the -- at the thumb.

15 Q. Is that one cut or more than one cut along

16 the thumb?

17 A. There's a cut that's noted here and another

18 one above it here, and one here, and then maybe also

19 in this location that looks like he had another one

20 there. So you have at least four there.

21 Q. Okay. And those are -- are those penetrating

22 wounds or incise wounds?

23 A. Those are incise wounds. He's just cut on

24 the surface.

25 Q. Okay. So those are, of course, not fatal

179

1 wounds, are they?

2 A. No, sir.

3 Q. In -- are all these wounds that these last

4 series of photographs show you on his forearm, the

5 back of his hands and the palm of his hands, all

6 consistent with defense wounds for Pablo Castro?

7 A. Yes.

8 Q. Are they consistent with defense wounds

9 against a sharp pointed instrument like that's

10 consistent with a knife?

11 A. Yes.

12 Q. The last -- the items I want to show you on

13 the exhibits are some exhibits you gave me when I

14 spoke with you a few weeks ago, 225, and that's

15 already been admitted into evidence. What is that?

16 A. This is a diagram that shows the -- the case

17 number for this case, then it has the front -- a

18 diagram of the front of the body and a diagram showing

19 the back of the body. And on the diagram there's

20 notations made where the stab wounds are and incise

21 wounds or slashes were. These are the ones that are

22 noted at the back, and then these other ones here were

23 the ones noted at the hand, and then -- the back of

24 the right hand and then also at the front of the right

25 hand. And this is -- shows some of the -- of the

180

1 injury at the right thumb, the face is cut off.

2 Q. Do those diagrams represent the wounds found

3 on Pablo Castro by you?

4 A. Yes, sir.

5 Q. And do they show them on the front of his

6 body, the back of his body and his hands?

7 A. It's his right hand.

8 Q. Right hand. There were no defense wounds on

9 his left hand?

10 A. There's none noted on the left hand. The

11 front of the right hand and the back of the right

12 hand.

13 Q. And State's Exhibit 226, what would that be?

14 A. This is diagram that shows the -- the face

15 area, the head area, that shows the -- the front, and

16 then the -- the right side and the left side of the

17 face and neck area.

18 Q. Those are essentially just diagrams of the

19 head and neck area, instead of the whole torso,

20 correct?

21 A. Yes, sir.

22 Q. And do both of those diagrams that I've

23 introduced show the location of the wounds that you

24 noted in your report and that you've described for the

25 jury, either through your testimony or through the

181

1 photographs shown to the jury?

2 A. Yes.

3 MR. SKURKA: Thank you.

4 Frank, can I have the lights, now,

5 please?

6 Q. (BY MR. SKURKA) I just had a couple of more

7 questions to finish up with, Doctor. Based on your

8 overall examination of the victim identified as Pablo

9 Castro in this case, did you -- were you able to

10 determine the cause of death?

11 A. Yes, sir.

12 Q. Can you tell the jury your official ruling in

13 the cause of death.

14 A. The cause of death was multiple sharp force

15 injuries.

16 Q. And are those multiple sharp force injuries,

17 again, consistent with being stabbed by a knife?

18 A. Yes.

19 Q. Did you also rule in the manner of death in

20 this case involving Pablo Castro?

21 A. Yes, sir.

22 Q. And what was the ruling as far as the manner

23 of death?

24 A. The manner of death was classified as

25 homicide.

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1 Q. And what does homicide mean?

2 A. Homicide means death at the hands of another.

3 Q. Was any knife ever presented to you as part

4 of your investigation, what type or kind of knife that

5 was found or recovered by the police?

6 A. No.

7 Q. Okay. But it's still your testimony that it

8 was a knife wound.

9 A. Consistent with a knife.

10 Q. Consistent with a knife wound.

11 A. Yes.

12 MR. SKURKA: Dr. Fernandez, thank you. I

13 don't think I have any other questions.

14 THE COURT: All right. Cross.

15 MR. GARZA: May I proceed, Your Honor.

16 THE COURT: Yes.

17 CROSS-EXAMINATION

18 BY MR. GARZA:

19 Q. Dr. Fernandez, from the amount of the -- of

20 stab wounds, are you able to tell how long it took for

21 them to be inflicted?

22 A. As far as the amount of time it would take

23 for the stab wounds, as far as there being ten stabs

24 wounds, enough time to stab someone, or, you know, to

25 move the hand with a sharp-edged knife ten times, that

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1 would be the minimum.

2 Q. In that amount of time. What -- what would

3 that infer to you?

4 A. As far as the -- the injuries themselves, you

5 look at the pattern of the injuries or the stab

6 wounds, for instance, the ones on the back, they're

7 clustered together, they're close together, the ones

8 in the neck are close together, so that indicates to

9 me it's probably a very, very rapid-type action. With

10 the four stab wounds in the back are a cluster of

11 wounds that happened one after -- probably one right

12 after another. The ones in the neck, they're close

13 together, they're probably wounds that happened one

14 right after the other.

15 Q. So does it infer that they were done rapidly?

16 A. Yes, sir.

17 Q. Does it also infer a sense of rage, perhaps?

18 MR. SKURKA: Objection. That calls for

19 speculation.

20 THE COURT: Well, I'm going to overrule

21 that. I mean, I -- can -- can you determine that,

22 Doctor?

23 THE WITNESS: As far as determining

24 what -- the type of mental state the person's in

25 that's causing these injuries, I can't tell from the

184

1 injuries themselves.

2 THE COURT: All right.

3 Q. (BY MR. GARZA) Are you familiar with the

4 term, "perseveration"?

5 A. I don't remember when I've heard that.

6 Q. So you're not familiar with it?

7 A. Off the hat, it doesn't ring a bell.

8 Q. The wounds that you've described to the jury

9 are -- some of them are different sizes; is that

10 correct?

11 A. Yes, sir.

12 Q. Could that be due to the use of different

13 knives, perhaps?

14 A. It's possible.

15 Q. Okay. Now, as far as the use of a serrated

16 knife, does a serrated knife have a tendency to leave

17 some sort of different indications in their wound

18 patterns?

19 A. A serrated knife may or may not leave a

20 different mark on the surface of the body.

21 Q. Can you explain that?

22 A. With a serrated knife, it would be an edge

23 that has different ridges to it, a ridge pattern from

24 the sharp edges. And if it scrapes along the surface

25 of the knife or if it drags along the surface of the

185

1 body, then you may see a pattern on the surface of the  
2 body that would be consistent with a serrated-type  
3 knife.

4 Q. Were there any indications from any of these  
5 wounds that you examined as to whether or not they  
6 could have been caused by a serrated knife?

7 A. I didn't see anything specifically on the  
8 surface that looked to me look a pattern from a  
9 serrated knife, but I can't say whether it is a  
10 serrated knife or not a serrated knife.

11 MR. GARZA: Thank you, Doctor.

12 Pass the witness.

13 THE COURT: Anything else?

14 REDIRECT EXAMINATION

15 BY MR. SKURKA:

16 Q. The fact that the wounds are different sizes,  
17 does that necessarily mean there's two different or  
18 three different knives?

19 A. No, it doesn't necessarily mean that.

20 Q. What does -- what does it mean?

21 A. Well, you can have two different wounds --  
22 two difference appearances of the wound on the body  
23 because of different factors. One of them may be the  
24 knife goes in at a different angle, the person is  
25 moving that's being attacked and it causes a change in

186

1 the shape of it. There's different factors that can  
2 cause you can have a different depth to the wound,  
3 also, from the same knife.

4 Q. So if you had one knife that was five or six  
5 inches long and you did different stabbings, as  
6 opposed to angle, depth, direction, it might appear  
7 that they're different size wounds, but they could all  
8 be coming from the same knife, could they not?

9 A. Yes. Those are the type of factors that  
10 would cause that. That's right.

11 Q. And did you see any evidence in Mr. Castro's  
12 wounds that a knife was, like you said, dragged along  
13 the body, that would reveal a serrated knife?

14 A. No. I didn't see anything that I'd call a  
15 pattern from a serrated knife.

16 Q. So it is -- your testimony is that it could  
17 be a serrated knife, you just can't tell the  
18 difference if it's a serrated knife or straight edge.

19 A. That's correct.

20 Q. Okay. The last question I want to ask you,  
21 did Mr. Cast -- did you do a toxicology screen on Mr.  
22 Castro?

23 A. Yes.

24 Q. Can you tell the jury what you're talking  
25 about when I say "a toxicology screen"?

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1 A. Toxicology involves testing the blood for  
2 drugs, drugs of abuse, alcohol.

3 Q. Did you do that test on -- on the victim in  
4 this case, Pablo Castro?

5 A. Yes, sir.

6 Q. Did you find evidence of alcohol in Mr.  
7 Castro's body?

8 A. There was none detected.

9 Q. Did you find evidence of marijuana in Mr.  
10 Castro's body?

11 A. Yes, there was none detected.

12 Q. There was none detected. How about cocaine  
13 or heroin or any other abusive or illegal drugs?

14 A. Yes, those drugs of abuse were tested for and  
15 they were none detected.

16 Q. So Mr. Castro had no drugs or anything in his  
17 body, correct?

18 A. For those tests, there were none detected.

19 MR. SKURKA: Thank you.

20 I'll pass the witness.

21 THE COURT: Anything else?

22 MR. GARZA: No other questions.

23 THE COURT: All right. You may stand  
24 down.

25 MR. SKURKA: May he be excused, Your

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1 Honor?

2 THE COURT: Yes, he may.

3 Please don't discuss your testimony with  
4 anyone, except for the lawyers.

5 THE WITNESS: Yes, sir.

6 MR. SKURKA: Your Honor, at this time  
7 the State rests its case.

8 THE COURT: All right. Ladies and  
9 gentlemen, I'm going to go ahead and let you go for  
10 the day, all right? Be back at 9:00 tomorrow and we  
11 will resume the trial.

12 All right, all rise for the jury.

13 (Jury exits courtroom.)

14 THE COURT: All right. Be seated. What  
15 says Defense Counsel?

16 MR. GARZA: Your Honor, at this time,  
17 the Defense Counsel also rests.

18 THE COURT: All right. I suppose there  
19 being no rebuttal, therefore --

20 MR. SKURKA: No, Your Honor, no rebuttal.

21 THE COURT: -- both sides close.

22 MR. SKURKA: Yes, Your Honor.

23 MR. GARZA: That's correct.

24 THE COURT: Okay. I'll let you -- what  
25 we'll do is I'll let you rest in front of the jury in

<p style="text-align: right;">189</p> <p>1 the morning, and then we'll go into closing arguments.</p> <p>2 Now, let's talk a little bit about the</p> <p>3 Charge. I've got a Charge here. Is the Defense</p> <p>4 requesting any instructions, additions -- in addition</p> <p>5 to what we have here?</p> <p>6 MR. GARZA: Your Honor, I think there's</p> <p>7 some indication possibly from some of</p> <p>8 my cross-examination, where I would ask the Court to</p> <p>9 consider inserting in the Charge a -- an instruction</p> <p>10 as to a lesser included offense.</p> <p>11 THE COURT: Being murder.</p> <p>12 MR. GARZA: Murder. Yes. And also</p> <p>13 accomplice, the -- the instruction on accomplice</p> <p>14 testimony.</p> <p>15 THE COURT: Oh, yeah. I think the</p> <p>16 accomplice testimony definitely needs to be in there.</p> <p>17 MR. JONES: This is an accomplice as a</p> <p>18 matter of law because he's a Co-Defendant.</p> <p>19 THE COURT: Uh-huh.</p> <p>20 MR. SKURKA: And my response, Your</p> <p>21 Honor, to the first thing, I don't see any evidence of</p> <p>22 it being a lesser included of murder. The evidence is</p> <p>23 clear that this was a robbery. We've had, I know,</p> <p>24 evidence all over the place about this being a</p> <p>25 robbery, both from the Co-Defendants and the actual</p>	<p style="text-align: right;">191</p> <p>1 don't -- the question -- okay, so that's agreed.</p> <p>2 We'll put that in.</p> <p>3 The question then becomes lesser included</p> <p>4 of murder. Let's see, what evidence do we have that</p> <p>5 there was a robbery or attempted robbery? Well, we</p> <p>6 have the -- the -- the Co-Defendant certainly</p> <p>7 testified that they had planned the robbery; we have</p> <p>8 the Defendant running from the scene, running to</p> <p>9 one -- not that Co-Defendant's sister's house, but</p> <p>10 another one, stating that they had robbed somebody; we</p> <p>11 have --</p> <p>12 MR. JONES: No, they didn't --</p> <p>13 THE COURT: -- testi --</p> <p>14 MR. JONES: No. They said they stabbed</p> <p>15 somebody.</p> <p>16 MR. GARZA: No, a stabbing, that they</p> <p>17 stabbed somebody.</p> <p>18 THE COURT: Oh, okay, all right. All</p> <p>19 right, then, scratch that.</p> <p>20 MR. GARZA: I don't know that robbery was</p> <p>21 ever mentioned.</p> <p>22 MR. SKURKA: Judge, may I clarify, too,</p> <p>23 that -- and I don't know, the Court probably hadn't</p> <p>24 forgotten this, but the two eyewitnesses, Kashif Butt</p> <p>25 and Mariano Cervantes, both testified that the</p>
<p style="text-align: right;">190</p> <p>1 evidence shown from the trial. I would -- I would</p> <p>2 reject the motion for the lesser included.</p> <p>3 As for the accomplice witness I guess I</p> <p>4 probably don't have a choice on that --</p> <p>5 THE COURT: I don't you do.</p> <p>6 MR. SKURKA: -- in saying that the</p> <p>7 accomplice witness should probably go in, and I'm</p> <p>8 assuming that we're -- we're talking about Christina</p> <p>9 Chavez --</p> <p>10 THE COURT: Uh-huh.</p> <p>11 MR. SKURKA: -- and the instruction says,</p> <p>12 "You instructed -- instructed that she's an accomplice</p> <p>13 witness, as a matter of law," and then the law of</p> <p>14 corroboration on that. That -- that's the instruction</p> <p>15 you're talking about, Mr. Jones and Mr. Garza?</p> <p>16 MR. GARZA: Correct.</p> <p>17 MR. JONES: Right.</p> <p>18 MR. SKURKA: Okay.</p> <p>19 THE COURT: Okay.</p> <p>20 MR. SKURKA: If the Court requires that,</p> <p>21 I can put that in --</p> <p>22 THE COURT: Yeah, let's put --</p> <p>23 MR. SKURKA: -- but that has to be</p> <p>24 corroborated.</p> <p>25 THE COURT: Yeah, let's put that in. I</p>	<p style="text-align: right;">192</p> <p>1 Defendant and his Co-Defendant were going through the</p> <p>2 pockets of the person as he fell to the ground.</p> <p>3 That's clearly evidence of robbery, going through the</p> <p>4 pockets.</p> <p>5 THE COURT: Now, I -- I know that --</p> <p>6 that, certainly -- I recall Mr. Butt testifying as to</p> <p>7 that after you showed him the statement. The other</p> <p>8 witnesses, I recall, though, recalled --</p> <p>9 MR. GARZA: Nothing about that until he</p> <p>10 was reminded of it.</p> <p>11 MR. SKURKA: Well --</p> <p>12 THE COURT: Well, one of the witnesses, I</p> <p>13 believe, recalled it and one of them did not, until he</p> <p>14 was reminded.</p> <p>15 MR. SKURKA: That's right. And just to</p> <p>16 clarify the record, Mr. Butt said that both of them</p> <p>17 had gone through the pockets. Mr. Cervantes did not</p> <p>18 remember it, until he refreshed his memory, and said</p> <p>19 that I think the girl had gone through the pockets.</p> <p>20 THE COURT: Yeah, then we also had</p> <p>21 testimony from the Co-Defendant that -- that --</p> <p>22 MR. SKURKA: \$1.25.</p> <p>23 THE COURT: The \$1.25, that she saw the</p> <p>24 other Co-Defendant run in with \$1.25, and I think that</p> <p>25 the \$1.25 was later recovered.</p>



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1 MR. SKURKA: The dollar was recovered.  
 2 THE COURT: It was bloody.  
 3 MR. SKURKA: And it was bloody. And it  
 4 was found in the Ford van.  
 5 THE COURT: Okay.  
 6 MR. SKURKA: Also, I would point out,  
 7 Judge, the extraneous offenses that were brought in to  
 8 show the intent, or the other thing of robbery --  
 9 THE COURT: Well --  
 10 MR. SKURKA: -- since he robbed the two  
 11 Whataburgers, I brought those in to show the intent or  
 12 motive or plan or intent was to rob, and the other  
 13 ones since they just kept doing robberies.  
 14 THE COURT: But the question is, do they  
 15 have any evidence to show the lesser included? I  
 16 mean, you've certainly got evidence to get to the  
 17 jury. I mean, I -- I don't think -- I don't think  
 18 they're --  
 19 MR. JONES: It's not an option.  
 20 THE COURT: -- they're saying that.  
 21 MR. JONES: No.  
 22 THE COURT: That's no even the issue.  
 23 The issue becomes whether there's --  
 24 MR. SKURKA: But the Blockburger test  
 25 shows that it's -- to get a lesser included, you have

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1 to have evidence of the lesser included.  
 2 MR. GARZA: Well, some of the evidence  
 3 that we would like to be able to be allowed to argue  
 4 as part of our argument to the jury is that it could  
 5 have just constituted a theft, Judge, and --  
 6 MR. JONES: Well, but -- but can I join  
 7 in here?  
 8 THE COURT: Uh-huh.  
 9 MR. JONES: All right, the question is  
 10 here, at the time the homicide took place, what was  
 11 the purpose of the homicide? In other words, was it  
 12 -- was it committed in order to affect or to get the  
 13 money?  
 14 THE COURT: Or was it just committed just  
 15 for the fun of it?  
 16 MR. JONES: Or was it -- was it just a --  
 17 just kill the guy cause he wanted to kill him, okay?  
 18 THE COURT: Cause he wanted to kill him  
 19 or --  
 20 MR. JONES: So now, the -- the --  
 21 THE COURT: That's all we have, really.  
 22 MR. SKURKA: But there's no evidence of  
 23 this being an after-the-fact murder.  
 24 MR. JONES: But those two fellows that  
 25 were across the car wash, in their first testimony,

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1 they -- they -- their in-court memory was that they  
 2 didn't see the Defendant going through the pockets.  
 3 The actual money that -- the dollar bill came from  
 4 Angela and not the Defendant.  
 5 Also, the -- the manner -- the  
 6 Co-Defendant said when they set out to so-called "go  
 7 rob some places," their agreement was that nobody  
 8 would be hurt. And so him -- the Defendant stabbing  
 9 somebody is inconsistent with that agreement.  
 10 THE COURT: Well, but if --  
 11 MR. JONES: He may have been operating  
 12 from some --  
 13 MR. SKURKA: Except he carried a knife to  
 14 that robbery.  
 15 MR. JONES: He may have been operating  
 16 under some -- some different motive at the time of the  
 17 actual -- because that raises an issue, which I think  
 18 --  
 19 THE COURT: Well, that -- that pitch  
 20 isn't a good one. I -- I disagree with you. I mean,  
 21 if you believe her, that they set out to do a robbery,  
 22 then I don't think you get there. The question is, if  
 23 the jury does not believe her in any way, shape or  
 24 form, and they reject her testimony, is there evidence  
 25 to support the lesser included.

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1 That's where I -- that's where I'm coming  
 2 from because if you believe her --  
 3 MR. JONES: Well, let's -- let's follow  
 4 that.  
 5 THE COURT: I think you're --  
 6 MR. JONES: Let's see --  
 7 MR. SKURKA: But it's not just her,  
 8 Judge. Remember -- and disagreeing with Mr. Jones, it  
 9 was established that Mr. Butt did see both of them go  
 10 through pockets. It was that one witness that only  
 11 saw her go through the pockets, but under the law of  
 12 parties, it doesn't really matter.  
 13 MR. JONES: But the testimony of those  
 14 two guys across the street, you know, is, you know,  
 15 the jury's told they can believe all the testimony or  
 16 part of the testimony of the witnesses. It's a  
 17 possibility that -- that the jury could -- could  
 18 actually not believe --  
 19 THE COURT: Yeah.  
 20 MR. JONES: -- Christina Chavez at all,  
 21 because she -- she had some serious discrepancies in  
 22 her testimony about whether -- which -- which goes to  
 23 her credibility. So if you exclude -- if the jury  
 24 doesn't believe her, then what are you left with? So  
 25 if -- if the jury --



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1 MR. SKURKA: There's other evidence of  
 2 robbery.  
 3 MR. JONES: Let me finish.  
 4 THE COURT: Let him finish.  
 5 MR. JONES: If the jury believes --  
 6 taking the two witnesses at the car wash, if they  
 7 believe that their in-court testimony before they were  
 8 impeached is -- is what -- is what happened, then all  
 9 he's guilty of is -- is a homicide.  
 10 MR. SKURKA: Judge --  
 11 MR. JONES: And we don't -- we don't know  
 12 the motive, and they don't have to prove the motive.  
 13 MR. SKURKA: I'll make it easy for the  
 14 Court, I'll take away the appellate issue and agree to  
 15 a lesser included --  
 16 THE COURT: Okay.  
 17 MR. SKURKA: -- of murder.  
 18 THE COURT: Okay.  
 19 MR. SKURKA: I don't want this coming  
 20 back because of the lesser included.  
 21 THE COURT: Okay. Well, then, done.  
 22 Let's stick it in there and we'll -- and you going to  
 23 put the accomplice witness --  
 24 MR. SKURKA: Yes, sir.  
 25 THE COURT: We've got pretty much an

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1 agreement on the Charge. Why don't you be here a  
 2 little early so --  
 3 MR. JONES: Yes.  
 4 THE COURT: -- so we can look at the  
 5 language.  
 6 MR. SKURKA: In fact, Judge, if -- if  
 7 Co-Counsel and Counsel will agree --  
 8 THE COURT: Yeah, let's just wait.  
 9 MR. SKURKA: -- I'll just get my  
 10 secretary to go work on it right now and then before  
 11 they leave today we can hammer it out.  
 12 MR. GARZA: We can hang around.  
 13 THE COURT: Yeah, let's do that. We've  
 14 got --  
 15 MR. GARZA: We'll stick around. We don't  
 16 have to leave.  
 17 THE COURT: We've got plenty of time.  
 18 MR. SKURKA: Actually, if you'll wait  
 19 here a minute, I'll just call down to Loretta and have  
 20 another version brought up.  
 21 If you don't mind, we can work in here --  
 22 THE COURT: Yeah, let's work it. Let's  
 23 do it.  
 24 (Short recess.)  
 25 THE COURT: You-all working on some

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1 agreements?  
 2 MR. SKURKA: That's what we're working  
 3 on, the Charge. It should be ready in a few minutes.  
 4 THE COURT: Okay. You-all work it out.  
 5 MR. JONES: We agreed.  
 6 THE COURT: Okay.  
 7 MR. SKURKA: Yeah, that's --  
 8 THE COURT: Okay.  
 9 MR. SKURKA: You need to come back here  
 10 and look at this other part.  
 11 MR. GARZA: On the lesser included.  
 12 MR. SKURKA: No, the part about the  
 13 lesser included.  
 14 THE COURT: If you-all can agree, it's  
 15 fine by me. You're working hard.  
 16 (Short recess.)  
 17 (Adjournment.)  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

1 THE STATE OF TEXAS )

2 COUNTY OF NUECES )


3 I, Mary Lopez Buitron, Official Court Reporter  
4 in and for the 94th Judicial District Court of Nueces County,  
5 State of Texas, do hereby certify that the above and foregoing  
6 contains a true and correct transcription of portions of  
7 evidence and other proceedings requested in writing by counsel  
8 for the parties to be included in this volume of the Reporter's  
9 Record, in the above-styled and numbered cause, all of which  
10 occurred in open court or in chambers and were reported by me.

11 I further certify that this Reporter's Record of  
12 the proceedings truly and correctly reflects the exhibits, if  
13 any, admitted by the respective parties.

14 I further certify that the total cost for the  
15 preparation of this Reporter's Record is \$ \_\_\_\_\_ and was  
16 paid/will be paid by \_\_\_\_\_.

17 WITNESS MY OFFICIAL HAND this the 4<sup>th</sup> day of  
18 October, A.D., 2009.

19

20   
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